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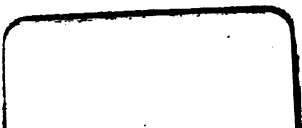
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REPORT

OF THE

TWENTY-SIXTH ANNUAL MEETING

OF THE

Alabama State Bar Association,

Held at

MONTGOMERY, ALA., JUNE 19 AND 20,

1903.

PROCEEDINGS

OF THE

TWENTY-SIXTH ANNUAL MEETING

OF THE

ALABAMA STATE BAR ASSOCIATION

HELD AT

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1903.

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PROCEEDINGS.

HALL OF THE HOUSE OF REPRESENTATIVES,
MONTGOMERY, ALA., June 19th, 1903.

The Twenty-Sixth Annual Meeting of the Alabama State Bar Association was called to order by the President, Lawrence Cooper, Esq., in the Hall of the House of Representatives in the Capitol at Montgomery, Alabama, at 10 o'clock, on Friday, June 19th, 1903.

Mr. Owen :

Mr. President, In the absence of Mr. Bestor, Chairman of the Central Council, I desire to present the names of certain gentlemen, who are present, for membership in the Association. I do this now in order that they may take part in the deliberations of the Association. I nominate for membership in the Association the following: Robert L. Hipp, Esq., of Cullman; Leon Weil, Esq., of Montgomery; Charles R. Bricken, Esq., of Laverne; C. O. Timmerman, Esq., of Prattville; C. S. Rabb, Esq., of Evergreen. I move that the Secretary be instructed to cast the vote of the Association for these gentlemen.

The motion was adopted and the Secretary cast the vote of the Association for the nominees, whereupon the President declared them elected members of the Association.

The President :

The first business, Gentlemen, is the Address of the President of the Association, which I will now read :

(Appendix.)

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The President :

The next business in order is the report of the Central Council.

Mr. Oates :

Mr. President, I received some days since the report of the Central Council, prepared by Mr. Bestor, the Chairman of the Council. In sending me this report, he informed me that he was going with his family to Europe, and could not be present to present the report in person. I will ask the Secretary to read the report.

The Secretary then read the report of the Central Council.

The President :

The next business on the program is the report of the Treasurer.

Mr. Troy, Treasurer of the Association, then read his report as follows :

TREASURER'S REPORT.

MONTGOMERY, ALA., June 18, 1903.

Mr. President and Gentlemen of the Association :

The Treasurer submits the following report of the finances of the Association for the year ending June 18, 1903 :

RECEIPTS.

To balance on hand at meeting July 2, 1902.....	\$ 392 55
To cash received from annual dues.....	813 00
Total.....	\$1,207 55

DISBURSEMENTS.

1902.

July 2	By cash collection of dues	\$ 2 00
July 5	" " telegram Ga. Bar Association	1 50
July 10	" " stamps.....	3 00
July 11	" " stenographer at meeting.....	17 50
July 11	" " Paul Speake, Ch'n Committee on account dinner to Associ'n	100 00

MINUTES TWENTY-SIXTH ANNUAL MEETING.

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Oct. 3	"	"	postage on Proceedings 25th Annual Meeting.....	\$ 18 40	
Oct. 21	"	"	book of drafts.....	25	
Oct. 24	"	"	stamps.....	1 00	
Nov. 21	"	"	discount on drafts.....	65	
Dec. 4	"	"	Brown Printing Co. 500 copies Proceedings 25th Annual Meeting.....	159 40	
Dec. 10	"	"	postage on President's Circular Letter.....	1 50	
1903.					
Feb. 26	"	"	postage on notice of dues.....	4 00	
M'ch 2	"	"	Ala. Printing Co. Notice of dues and envelopes.....	2 75	
Ap'l 22	"	"	stamps.....	1 00	
May 8	"	"	exchange on drafts.....	5 85	
May 18	"	"	stamps.....	1 00	
June 5	"	"	postage on prog's 26th Meeting	5 00	
June 16	"	"	Montgomery Shooting Club, rent of Lake on 20th.....	15 00	
June 16	"	"	Brown Printing Co. letter heads, cards and etc....	12 25	
June 16	"	"	Secretary salary to July 1st..	300 00	\$ 652.05
The balance remaining on hand is.....				\$ 555.50	

ALEXANDER TROY, *Treasurer*.

Audited and approved June 18, 1903.

R. F. LIGON,
GEO. W. JONES,

Sub Committee of Executive Committee.

On motion of Mr. Ligon, the report of the Treasurer was adopted and filed.

Mr. President :

The next business in order is the report of the Executive Committee.

Mr. Ligon :

I am a member of the Executive Committee, and in the absence from the city of Mr. Graham, the Chairman of the Committee, I will read the report.

REPORT OF THE EXECUTIVE COMMITTEE.

The Committee has held meetings from time to time as was found necessary for the transaction of business.

The Committee has examined the accounts of the Treasurer. Messrs. R. F. Ligon and Geo. W. Jones, a sub-committee appointed for the purpose, examined and audited the books, and checked the vouchers and found the same, in all particulars, correct.

It was the opinion of the Committee that a better attendance at this meeting of the Association would be secured if the place of meeting was fixed at Montgomery and at a time after the adjournment of most of the Courts in the State except the Supreme Court, and prior to the time when the Fall Courts would begin their sessions.

The Committee accordingly fixed the City of Montgomery as the place, and the 19th and 20th of June as the time for holding the 26th Annual Meeting of the Association.

The Committee invited members of the bar to read papers before the Association, and those of them who have accepted have been announced in the printed program—a copy of which has been mailed by the Secretary to each member of the Association.

On the invitation of your Committee, Hon. Edward M. Shepard, of New York, one of the greatest lawyers and most distinguished citizens of our country, has accepted and will deliver the Annual Address before this meeting. We congratulate the Association on his acceptance of the invitation.

Since our last meeting four members of the Association have died: Hon. W. C. Bibb of Montgomery, Hon. John H. Caldwell of Jacksonville, Hon. Tennent Lomax of Montgomery, and Hon. R. H. Lowe of Huntsville. We suggest the appointment of a committee for the purpose of preparing suitable memorial sketches of these distinguished members of the Association for publication in our proceedings.

The Committee has made all necessary arrangements to give a dinner to the members of the Association at Jackson's Lake on Saturday, the 20th inst. The Louisville & Nashville Railroad Company has placed a train at the disposal of the Association for the purpose of the meeting on Saturday.

Respectfully submitted,

E. A. GRAHAM, *Chairman,*

R. F. LIGON,

RAY RUSSTON,

GEO. W. JONES,

ALEX TROY, *Ex-Officio,*

Executive Committee.

On motion, this report was received and filed.

On motion of the Secretary, the report of the Committee on Jurisprudence and Law Reform was passed, as the Chairman of the Committee, Frank S. White, Esq., was absent, being engaged in the trial of a case in Court at Birmingham, and had not furnished the Secretary with his report.

On motion, an informal recess was had to afford the members of the Association an opportunity of meeting Hon. Edward M. Shepard who had arrived from New York to deliver the Annual Address before the Association.

On reassembling, the President introduced Mr. Shepard to the Association in the following words :

Ladies and Gentlemen : We are singularly delighted today in the presence of a distinguished citizen of the State of New York. We are honored in the presence of the Hon. Edward M. Shepard, who will address you on this occasion.

Mr. Shepard then delivered his address.

(Appendix.)

The Secretary :

Mr. President, I move that the thanks of the Alabama State Bar Association be tendered to Mr. Shepard for his able, entertaining and eloquent address.

Mr. Coleman :

Mr. President, I offer an amendment to the motion, that Mr. Shepard be elected an honorary member of the Association, which motion, as amended, was unanimously adopted.

The Association then adjourned until 4.30 o'clock P. M.

AFTERNOON SESSION.

The meeting was called to order at 4:30 by the President.

The Secretary :

In the absence of the members of the Central Council, I propose Mr. J. T. Letcher, of Montgomery, for membership ;

in the Association. On motion, the Secretary cast the vote of the Association for Mr. Letcher, and he was elected a member of the Association.

Mr. Blakey:

Mr. President, this morning when the report of the Central Council was read, taking the facts as they appeared from the face of the report, and without any knowledge of the particulars of the case, I moved that that report be printed as a part of the minutes of this Association, and also to endorse and ratify the action of the Central Council. I desire now to make a motion to reconsider that motion.

Mr. Nathan:

I suggest that probably a question of that sort should not be taken up until some member of the Central Council is present. I do not think it would be wise to reconsider a motion made this morning, when members of the Council were present, at a time when none of the members are present; but I think it should be reconsidered at a time when there would be some member of the committee present to defend it, if there was any necessity for it. I do not object to a reconsideration, but as none of the Council are present, it seems to me that we should wait until some members are present. I merely suggest this.

Mr. Blakey:

General Oates was on the floor when the motion was made, and he did not take sufficient interest to vote one way or the other, and he is a member of the Central Council:

Mr. Owen:

Mr. President, I think the proper thing to be done would be to table the motion and let the report lie over, and it can be taken up for final action to-morrow morning. I move that this be done.

The motion was carried, and the question on the motion to reconsider the vote by which the report of the Central Council was ordered to be printed and recorded as a part of the minutes of the Association was postponed until the session on Saturday morning.

Mr. Owen:

Mr. President, I move that a committee of five be named to nominate the officers of the Association for the ensuing year and report on to-morrow, just prior to adjournment.

Mr. Martin:

Mr. President, don't the Constitution provide for the election of officers?

Mr. President:

Yes, sir.

Mr. Owen:

Mr. President, I am under the impression that the general custom is to appoint this committee to nominate the officers, and they report just before final adjournment, when the election takes place

Mr. Harmon:

My understanding is, that the matter of the election is taken up on the second day of the meeting of the Association. At one time the matter was discussed on the first day, but, as a general thing, the nominations were deferred until the last day. Let this matter remain over until to-morrow, when the attendance will be larger. I don't know that anybody is interested one way or the other, except that it seems to me that it would be more appropriate to have the election of officers come up when there is a larger attendance than there is this afternoon, and while it has been the custom of the Association to elect whatever officers the committee might

select, at the same time I think it would be more appropriate for the election to take place when a larger number of members were present.

Mr. Owen:

Mr. President, I am not interested in the matter, except to secure good officers, and I understand it is the custom, and my motion was that you appoint a committee to make the nominations for officers, to report to-morrow afternoon just prior to adjournment. If this is not proper to be done to-day, I am willing to have it done to-morrow. I insist on my motion, although I really do not care one way or the other.

The motion was adopted.

The President:

The next business in order is a paper on the British Constitution, by Hon. W. L. Martin.

Mr. Martin then read his paper on the British Constitution.

(Appendix.)

The President:

The next on the programme is the report of the Committee on Judicial Administration and Remedial Procedure.

The Secretary stated that he had received no report from Mr. Parks, the Chairman of this Committee, and moved that the report be passed, which motion was carried.

The President:

The report of the Committee on Legal Education and Admission to the Bar is now in order.

Mr. Thorington:

Mr. President, I have a report to submit, but I am sorry to say that I have not been able to submit it to the members of my committee. I had hoped to meet them all here, but there

is only one member present, and I wrote it so recently that I did not have time to send it to each of the members of the committee.

I will read the report.

(Appendix.)

Mr. Owen:

Mr. President, As a member of that committee, I have had a conversation with Judge Thorington, and while I did not examine the report, I am familiar with its general outline, and I wish to say that I am in hearty accord with the recommendations made in it, and I think that we all owe a vote of thanks to Judge Thorington, the Chairman of the Committee, for his very exhaustive and excellent paper. Occupying, as he does, the position of Dean of the Law School, his statements are *ex-cathedra* on this subject, and are certainly entitled to more weight than if they came from any other source. I wish to say that I am in hearty accord with the Chairman of the Committee.

It was moved by Mr. Blakey and seconded that the report of the committee be referred to the Committee on Legislation.

The Secretary:

If this report is referred to the Committee on Legislation, it will be several years before we can get any practical result from it, because that committee would have to prepare a bill and have it approved by the Association; then the bill would have to be referred to the Committee on Legislative Enactment, and that committee would have to present it to the Legislature, which will not meet again for four years. I am very much impressed with the views suggested by Judge McClellan. In order to get the benefit to the Association without the delay of years, I move that Judge Thorington be

appointed a committee of one, to prepare a bill embodying the views set forth in his report, and present it to the Committee on Legislative Enactment for introduction into the Legislature in September as expressive of the wishes of this Association. The law on this subject is a decided improvement on the old method of admitting attorneys, but there are defects in it, and I am in favor of the method suggested in the letter of Chief Justice McClellan to the Chairman of the Committee, and made a part of his report.

The motion instructing Judge Thorington to draw a bill in accordance with the recommendations of the committee, and hand same to the Committee on Legislative Enactment, was adopted.

The paper prepared by Hon. Jo. H. Nathan was then read by the Secretary, in the absence of Mr. Nathan, who had to leave the city to attend to business engagements.

(Appendix.)

The report of the Committee on Correspondence was read by the Secretary, in the absence of the Chairman, Hon. F. G. Bromberg, who was unavoidably absent from the meeting in the trial of a case in Mobile.

(Appendix.)

The paper on "Exemptions," by W. W. Kirkland, Esq., was passed on motion of the Secretary.

The President then announced the Committee on nominations of Officers, as follows: Messrs. Thos. M. Owen, R. F. Ligon, R. L. Harmon, J. J. Mayfield and Paul Speake.

A resolution was then presented by Mr. Blakey, relating to the enactment of a statute in regard to the Code of Ethics, as follows:

Resolved, by the Alabama State Bar Association, That a committee of three members of this Association be appointed by the President, whose duty it shall be to prepare and seek to have passed by the Legis.

lature of Alabama, at the September session, a bill which shall more specifically define the duties and rules of conduct of attorneys and provide for the punishment of attorneys guilty of unprofessional conduct.

Mr. Owen :

I move the resolution lie on the table, to be taken up to-morrow.

Carried.

Mr. Troy:

It is the duty of the Committee on Legislative Enactment, under our constitution, to go before the Legislature, when assembled, and present bills which have been recommended by the Association. The reason I suggested Judge Thorington as a committee of one to frame the bill on admission to the bar was, because he was thoroughly familiar with the subject. I think that Mr. Blakey's resolution, even if approved by the committee, should go to another committee than the Committee on Legislative Enactment, since that committee is merely a body to present the bills as recommended by the Association.

Mr. Harmon:

The report of the committee recommends, as I understand it, a course of study which the student is required to take and the subjects on which he should be examined before admission. Another topic is that the student's examination should embrace an examination of the principles of the Code of Ethics along with the other studies which the student is required to be conversant with before he is allowed to practice law in the State of Alabama. Each of these subjects should come up as an independent matter, and they should not be tied on to each other. The bill relating to the course of study might be passed by the Legislature, while the other might be defeated, and the bill relating to the Code of Ethics

might be passed and the other bill defeated. Putting the two together, the effect might be to defeat both. Besides, they each relate to independent matters of such character that they could not be embodied in one statute. One relates wholly to persons seeking license to practice. In the other it would carry in its operation persons who have already received a license and are practicing law in the State, and those who may hereafter seek to secure a license to practice law in this State. I think it would be unwise, Mr. President, to couple the subjects together in such a form as to make one dependent on the other. I think it is very important that each student should be familiar with the Code of Ethics, and if the statute requires him to study this Code, and he is required to be examined upon its requirements, very naturally it will have a tendency to impress the student, and after he becomes a lawyer he will be familiar with the duties and penalties prescribed and have some information on the subject.

Mr. Owen:

Mr. President, The Code of Ethics as it now stands is binding in a moral way on the members of the Association and of the bar. We have embodied in the Code seven items, which an attorney obligates himself to observe. These seven items contain the rules of professional deportment of a high standard, which every attorney is supposed to maintain. What Mr. Blakey proposes is that the entire Code be adopted into a statute, and that the Committee on Legislative Enactment seek to secure its adoption. I don't know that we are prepared to go to the extent of saying that we ought to have that Code of Ethics adopted into a statute. If so, I think the suggestion of the Secretary was entirely appropriate that a committee should be raised. I agree with Mr. Harmon that we should not confuse the two subjects, and that the bills should be prepared by a special committee. In order to get

the matter in shape, I move, as an amendment to the resolution, that a special committee of three be appointed by the President to serve in the place of the Committee on Legislative Enactment. Mr. Blakey accepts the amendment. I move that the report lie on the table.

The motion was adopted.

Mr. Troy then moved that the Association adjourn until Saturday morning, the 20th, at 11 o'clock, to reconvene at Jackson's Lake, which was carried.

SECOND DAY.

SATURDAY, June 20, 1903.

The Association met at Jackson's Lake at 11 o'clock pursuant to adjournment.

The President:

The first thing on the program this morning is the report of the Committee on Legislation.

Mr. Troy:

Mr. President, Owing to the absence of Mr. Tillman, the Chairman of the committee, and no report having been received, that report will have to be passed.

The President:

The next on the program is a paper on "Wantonness in Personal Injury Cases," by Paul Speake, Esq.

Mr. Speake then read his paper.

(See Appendix.)

The Reports of the Committees on Publication, Grievances and Local Bar Associations were passed, owing to the absence of the Chairmen of the several committees.

The President:

We will now have a paper by Ed. deGraffenried, Esq
Mr. deGraffenried then read his paper.

(See Appendix.)

Mr. Mayfield:

Mr. President, In connection with the paper of Mr. deGraffenried, I desire to impart to the Association some information which I only learned a few days ago from Dr. Wyman, whom we call our "Walking Encyclopedia," and which may be new to you as it was to me. He told me that during the session of 1826-7, the Legislature of Alabama passed a joint resolution prohibiting the introduction of slavery into Alabama, and thus Alabama was among the first states placed on record as against slavery.

Mr. Oates:

Mr. President, As a member of the Central Council, I have a few names to present for membership in the Association. I trust I will be indulged for a moment in the expression of my individual views in regard to this matter. I have observed the methods by which lawyers are elected members of the Association; it amounts to simply this—those who make application are always elected and never rejected. Some seem to be of the opinion that all the members of the bar of the State should be accepted and carried along. I am not of that opinion, and believe that the rules of the Association should be amended. My experience teaches me that men appreciate more highly organizations (for whatever purpose formed) which are, by their rules, made more difficult to obtain membership in than those which are open to the public. My observation is, that wherever applications are more closely scanned and stronger evidence of fitness is required, such associations and organizations stand higher in the estimation of their members as well as of outsiders. And

I believe the rules ought to be amended so as to adopt a different method. As for myself, I would like to see it as put in the rules of some of our secret societies. While our proceedings are necessarily public, yet as to all applications for membership there should be a secret ballot. Such an amendment would be a good one.

I rise to place before you the following applications for membership in this Association: Isaac R. Hinton, of Carrollton; Samuel L. Cox, of Carrollton; J. T. Heflin, of Lafayette; and Robert B. Evins, of Greensboro. Personally, I know but one of these gentlemen, Mr. Heflin, our Secretary of State, but I believe there are others here who know and will vouch for the others.

Mr. Owen:

Mr. President, I move that the Secretary cast the ballot of the Association for the gentlemen named.

The motion was seconded and carried.

The Secretary:

I have cast the ballot of the Association for Isaac R. Hinton, of Carrollton; Samuel L. Cox, of Carrollton; J. T. Heflin, of Lafayette, and Robert B. Evins, of Greensboro, for membership in this Association.

Mr. Blakey:

Mr. President, If in order, I move that the Report of the Central Council, which was left over from yesterday's business, be referred to the incoming Central Council to take such action in the premises as may seem good to them.

The motion, on being seconded, was then put and carried.

Mr. Troy:

Mr. President, This is the 26th annual meeting of the Association, and while all the meetings have not been held at Montgomery, yet most of them have been, with the second day

out here at the Lake. It has been the unbroken custom for the Louisville and Nashville Railroad Company, through Col. J. M. Falkner, its District Attorney at Montgomery, to tender a special train for the use of the members for passage to the Lake and return, and I therefore offer the following resolution:

Resolved, That the thanks of the Alabama State Bar Association be and they are hereby tendered to Hon. J. M. Falkner, District Attorney of the Louisville and Nashville Railroad Company, for many courtesies extended, and that he be made an honorary member of the Association.

Mr. Blakey:

I move that we adopt that resolution by a rising vote.

The motion was seconded, and carried unanimously.

Mr. Owen:

On yesterday, after the reading of the Report of the Committee on Legal Education and Admission to the Bar Mr. Blakey offered a resolution, which, on motion, was laid on the table. I move now to take it from the table.

Mr. Wood:

I second the motion.

The motion was carried.

Mr. Blakey:

Mr. President, Under the statutes of Alabama, as they now exist, there are seven duties laid down by the statute as to the conduct of attorneys, and those duties they are required by law, at the time they are admitted to practice, to take an oath that they will maintain and perform. If there were any way, under the present laws of Alabama, by which an attorney could be dealt with for failing to comply with the duties which he takes that oath to perform, I would never have offered that resolution. But under the statutes of Alabama, as they exist to day, there are only two cases where

of right for failure to comply with his oath. One of those is where he is convicted of a felony other than manslaughter, the courts are authorized to deal with an attorney as a matter and the other is where a judgment is rendered against him for money which he has collected in his professional capacity, and execution against him has been returned "No property." In each of those cases the record of the case is conclusive, and the courts are bound to disbar him. But as to the other matters, they may be included under the term "unprofessional conduct," and our Supreme Court has said that it does not know what "unprofessional conduct" means.

In all the existence of the Association, twenty-six years, there have been only two cases in which it was sought to disbar anyone for unprofessional conduct, and in one the Supreme Court said there was no evidence of unprofessional conduct, although it seemed to me the evidence was as strong as could be, and the other was where a lawyer was charged to have received money in the United States Court, in his professional capacity, which he failed to pay to the parties entitled to it. I believe General Oates prosecuted that case. We all come in contact with many acts in our transactions with members of the bar, which is conduct extremely unprofessional, and yet there is no rule of conduct laid down by statute by which we can touch it. Under the laws of Alabama, as they exist to-day, I can go into court and file a complaint on behalf of one man to-day to recover money, and to-morrow I can file a plea for the defendant in that case for money growing out of the same transaction, and there is no law in this State that will hold me for such conduct as that. A man may go into the Chancery Court and represent conflicting interests in the same case, and yet there is no way to reach him, to disbar him. I say such things ought not to exist, and there ought to be some way to disbar a lawyer for such conduct. If these men

were members of the Association, we could take steps to disbar them, but that is not so unless they are members of the Association. These are disreputable practices, and it is for the purpose of procuring some legislation on the subject that I offered the resolution. Mr. Owen offered an amendment that it be a committee of three, and that amendment was accepted by me.

Mr. Mullins:

Mr. President, I will not renew my motion to table the resolution offered by Mr. Blakey. The only purpose I had in the matter was that I disagreed with the gentleman as to how the evil should be reached. Inasmuch as I shall not renew my motion, I will simply say that if the evil exists it should be corrected, but it is not my view that the establishment or enforcing of a code of ethics should be delegated to the Legislature or to anybody else. The Bar Association, I conceive, has more authority—the only authority on this proposition, and ought to preserve it.

Mr. Oates:

Mr. President, I agree in part with both of the gentlemen. My friend, Mr. Blakey, alluded to the fact that I had prosecuted one of the cases which resulted in disbarment. That man was a lawyer at Dothan, and had been guilty of receiving money which should have been paid over to the officers of the United States Court, which he did not pay over, and for that the Judge dealt with him as for contempt, and imprisoned him. That brought it to the attention of the Central Council of the Bar Association, and it fell to me to draft the charges, which I did, after making myself familiar with the facts. He employed counsel and obtained a continuance, against my very strong objection, but, having some of the witnesses present, I turned them over to the solicitor, and he took them before the grand jury and obtained an indictment for the embezzle-

ment of that money, and he was arrested and came in and plead guilty to the charge, and I got a judgment dismissing him from the bar.

I have been a practicing lawyer for forty-five years now, always in the active practice, except for a good part of the time I have been engaged in politics which took me out of it. But I see and hear things in the bar that are disreputable. If there is any profession that ought to be beyond reproach, it is that of the law, and I think the only way to make it thus is to deal strictly with those who have succeeded in getting a law license and then dragged the profession downward by their disreputable acts. We ought not to allow sympathy to mislead us. That case caused me to examine the methods and causes of disbarment more than I ever had. As it is now, it is all in the hands of the Judge, and if he is in sympathy with the defendant you cannot disbar anybody. As it is the law is very deficient, it is in a deplorable condition. And any gentleman who will examine it will see that if the Judge is in sympathy with the accused you cannot disbar him, except in the two particulars mentioned by Mr. Blakey. I agree with you that you ought to adopt a code of ethics, but bring an influence to bear on the Legislature to amend the law so that you can deal with dishonorable men and put them out of the profession.

Mr. Wood:

It seems to me, Mr. President, we are all agreed upon the proposition before the Association. The only question is how to reach it, and I hope the gentleman will accept as a substitute for his motion that a special committee of three, consisting of Mr. Blakey, Mr. Oates and Mr. Mullins, be raised, to report immediately after the noon recess, a resolution which will cover this matter. I think we have all the code of ethics we want. I think we want a little more statutory authority.

The question is upon the adoption of the substitute offered by Mr. Wood.

The motion was carried.

The President:

I would like to make this statement with reference to an occurrence in my section of the country. A young man was charged with stealing law-books. In the absence of General Harrison, Chairman of the Committee on Grievances, I took upon myself the appointing of a committee to prosecute the young man, and he was prosecuted and disbarred in a very short space of time.

Mr. Wood:

I have heard there was some justification for that young man, because he stole Alabama Reports, and that was the only way he could get them.

On motion, the Association then adjourned until 3 p. m.

AFTERNOON SESSION.

Mr. Blakey:

Mr. President, The committee appointed before the recess to prepare a resolution, report the following, which we recommend be adopted:

Resolved, by the Alabama State Bar Association, That the Committee on Legislative Enactment be and they are hereby instructed to prepare and seek to have enacted a bill which shall have for its object the establishment of a Code of Ethics for the entire bar of the State of Alabama, which shall have the binding force of a law in regulating the professional conduct of attorneys in this State.

The resolution was adopted.

Mr. Blakey:

Mr. President, I have another resolution which I desire to offer:

Resolved, by the Alabama State Bar Association, That a committee of three be appointed by the President, whose duty it shall be to re

port at the next meeting a by-law governing the election of members, whereby greater restrictions may be thrown around the obtaining of membership in this Association.

Mr. Wood :

I move the adoption of the resolution.

The motion was seconded, and carried.

Mr. Owen :

Mr. President, as Chairman of the Committee on Nominations, I desire to make the following report :

Mr. PRESIDENT :

Your Committee, appointed to nominate officers of the Association for the ensuing year, beg leave to suggest the following :

For President—Hon. Ed. deGraffinried, Greensboro.

1st Vice President—Hon. John B Knox, Anniston.

2nd Vice President—Hon. Horace Stringfellow, Montgomery.

3d Vice President—Hon. Wm. B. Bankhead, Huntsville.

4th Vice President—Hon. J. Manley Foster, Tuscaloosa.

5th Vice President—Hon. J. W. Gray, Mobile.

Secretary and Treasurer:

Alex. Troy, Montgomery.

Executive Committee :

S. H. Dent, Jr., *Chairman*,

B. P. Crum,

Wm. M. Blakey,

Gaston Gunter,

Alex. Troy, *ex-officio*.

Central Council:

Thomas R. Roulhac, *Chairman*, Sheffield,

W. W. Callahan, Decatur,

E. K. Campbell, Birmingham,

A. S. Vandegraaff, Tuscaloosa,

Charles P. Jones, Montgomery.

All of which is respectfully submitted.

THOMAS M. OWEN, *Chairman*.

J. J. MAYFIELD,

R. L. HARMON,

I. F. LIGON,

PAUL SPEAKE.

On motion, duly seconded, the report of the Committee on Nominations was unanimously adopted, and the Secretary was instructed to cast the vote of the Association for the officers named in the report of said committee.

Mr. Mullins :

Mr. President, I move that the thanks of the Association be tendered our retiring President and Secretary for their efficient services during the past year.

The motion, being seconded, was put by Mr. Mullins and carried unanimously.

Mr. Troy :

Mr. President, several years ago Hon. Thomas G. Jones prepared a Code of Ethics for the Association, which was adopted. He is now the District Judge of our Federal Court. I move that he be made an honorary member of this Association.

The motion, being seconded, was carried unanimously.

On motion the Association then adjourned *sine die*.

ADDRESS
BY
LAWRENCE COOPER,

President of the Association.

Gentlemen of the Bar Association :

A review of any twelve-month period in general affairs, emphasizes to the thoughtful mind, the events which have swiftly flitted away. Every improvement in policy or adventure is vitalized through this retrospect. According to the individual temperament, there are agreeable surprises and discouraging disappointments. There is no universal lens for the public eye. The work of art to the untutored, is commonplace. The searcher after intricate and hitherto unfathomable problems does not appreciate the wildness of a strenuous career or the abandon of ease and quiet. One man works, while another talks. Here is the effort to develop, and there is the desire to destroy. The demonstration of the utility of the telegraph evoked the criticism that it might carry a message, but never would a cotton-bale whiz over the line. Recently a clergyman of notoriety prayed most fervently that this country might be saved from the heresy of a white man's government, while Alabama and Virginia were praising in Hallelujahs, the restoration of Caucasian power to its wonted place among the nations. The outstretched

NOTE.—A brief resume' of public statutes, important decisions, and events of the past year are required as the basis of the President's address.

landscape viewed through the field-glass, graded with the vision, presents a panorama beautiful in degree, according to individual perception and intelligence.

Our experiences may be different, when we consider the brief period which has elapsed since we assembled on Monte Sano, amid the beautiful environments of North Alabama, where we partook of the delicious draught of perpetual youth, to strengthen us in the hot and sultry weather, as well as to fortify us against chilling blasts, when drawn into the strife of professional life, to climb the hills and span the chasms of the New Constitution, to follow the Legislature in levelling the way, cutting out the curves and bridging the streams so that the great engine of legal machinery would neither collide nor become derailed. Varying opinions constitute the means of formulating methods of successful venture, and as a result we have the Roentgen Ray, which may have become discoverable through accident, yet after conflicting theories and bitter asseverations, the noted scientist conceived the positive and negative antipodal points, from the union of which flew the spark—a glimpse of supernatural light, with its unparalleled possibilities.

Marconi, in his triumph of the ages, far eclipses any earlier thought for material development in the transmission of messages, and will soon belt the universe by harnessing the waves of light and sound. Whatever imperfections may temporarily exist in the system, we must conclude that a successful termination is assured. The same masterful study of the scientists is exhibited in the great economic problems of the day, now the subject of constant thought of financiers and statesmen, between the employer and the employe, the capitalist and the laborer, waging as a relentless warfare. These differences must be settled upon broad, humanitarian principles. The strike and the boycott are discordant notes in the harmony of the world, and are as natural as friction

between any opposing objects, but are only susceptible of settlement when relieved of the demands of personal selfishness. In all trades, vocations and professions, the seat of the trouble lies hidden until personal interests are injected into the difficulty, when it immediately becomes apparent. The farmer clings to his product for the best price which he can obtain, and as defensive, any combine against his fellows is accepted as legitimate and necessary. The merchant, the cotton dealer or the manufacturer is ostracised by the producer, for some real or imaginary grievance; and in turn, the products will not be purchased in order that existing prices may warrant a profit. These conditions, when magnified by numbers and moneyed interests are generated into a semi-rebellion to overthrow opposing forces. Industries are congested, labor becomes imperial—capital grows Kingly—squalor clad in the teguments of beggary is defiant—dividends topple as an unmortared structure in an earth-quiver—work ceases—money is vaulted—antagonisms fill the air with bitterness and the alarm is sounded that we have,—a strike!

THE COAL STRIKE.

The violation of a rule of the organized body by the dominant, or a demand, not recognized as a right by the servile, act as a wedge to split in twain the most agreeable relations. The interdependency of these classes is forgotten and ruin and disaster follow. The life of the country has been threatened by a strike. Its possibilities and potentialities were not conjectures. Its absolute realization, with its dreaded consequences, were upon us. Every fireside felt its power. Its endurance had no end, and misery marked its aftermath. Nothing could stem the tide—nothing could release the grip. The law creating agencies were impotent, diplomatists were exhausted and politicians were daft.

This wrecked condition of affairs, under the weight of its own desolation, suddenly evolved, as if by divine transmigration, into an arbitration. The conflict in the Pennsylvania coal regions left no room to doubt that fuel—and coal as its supply—is the most potent factor in our commerce. Every household in this great land is painfully interested against the repetition of this stragetic performance between capital and labor. The humblest and the haughtiest in our citizenship turn with searching eyes to the law-making power for relief. Do we infer that legislative enactment cannot prevent the return of this blighting curse during the coming winter? The Legislature of a great State, with lawyers of unexcelled sagacity, had no suggestion to offer whereby the crimes against the homes and prosperity of the country could be stayed. We might pause to inquire whether any species of legislation, which may be sufficient, is not justified, without regard to party creeds. The injunctive process of sovereignty is not in accord with the principles of American government, belonging rather to the ukase of a Russian Potentate, but is not any heroic remedy excusable, if it can obviate another effort fraught with such results? Should not partisanship yield its tenets and permit the exercise of such power as will be necessary to eradicate the universally admitted wrong? If, in the development of the country, new complications arise, through an immense, yet heterogeneous population, the law should keep pace with superior resisting forces. Peace is not supreme—it is the reflex of a controlling influence, resulting either from an existing power, or generated by interests in common accord.

It is for your mature reflection to say, whether every effort to create a strike, and any combination whereby help is withdrawn from a manufacturing industry, should be under the severe condemnation of the law, unless it has the legal form of entity, which can be reached by judicial process. This

entity should be licensed by the parent authority, subject to revocation whenever there is a failure to submit differences to arbitrament, under rules of procedure provided by the government. A like rule must govern the opposing factor which makes the strike a possible thing. Many are ready to say that we would have compulsory arbitration, and that it is contrary to the genius of the American Republic, and that it invades the rights, the privileges and the immunities of the citizen. The Courts maintain the validity of the arbitration clause of the insurance contract, prepared by the insurer as a condition of indemnity to the insured, and it would seem that a license by the government might contain a similar precedent condition to the grant of corporate existence. Without admitting the wisdom of this thought, or attempting a discussion of its merits on this occasion, I leave it to your consideration

THE VENEZUELA DRAMA.

Next, I may say, in order of importance, which occasioned world-wide apprehension, was the Venezuelan imbroglio. The Eastern and Western boundaries of America were distinctly marked on the 2nd day of December, 1823, and the appearance in the Carribean of European vessels, with the avowed purpose of enforcing demands against Venezuela, by seizing her customs and seaports, could only be regarded as the manifestation of an unfriendly spirit towards the United States. This American principle had been accepted by all nations for nearly four-score years; and the concerted effort of three mighty powers very naturally caused alarm, that the effort would now be made to overthrow it. The courage and patriotism of the United States stood on wiry edge. The cloud hung low and was ominously dark, and would it be rift with a storm or lifted away through a summer breeze, was the pulsating throb of every heart within the domain of this great

land. The right to seize LaGuayra for one moment to collect a debt through an appropriation of the customs, meant indefinite occupancy, and title by conquest would be a patent fact. The American Navy glide quietly into adjacent waters. Was this an announcement that the American doctrine would continue? The plan and purpose of this Government had not been published, yet it placed in command an admiral of undaunted courage, and of full American blood, who had been called from private life, to stand in history by the side of Israel Putnam. This was not a demonstration of power on the part of this government, or an attempted comparison with the besieging forces, but it clearly manifested that the rule denying the right of foreign interference in this land would not be reversed.

These questions involved were important and difficult, and the reference of them to The Hague Tribunal was a happy solution. The position of this Government remains unchanged, and definite and adequate procedure is obtained for the settlement of the alleged claims against Venezuela. There could scarcely be urged a more potent argument favoring ultimate arbitration for the adjustment of international crises.

In times of peace the Navy should be continuously strengthened, and of sufficient power, to influence compulsory arbitration, averting actual hostilities. The increase of the Navy gives to the common people a sense of security, and business undertakings progress without apprehension as to the future. Germany, in this regard, is following the course of wisdom, and has set a pace for the guidance of every peace-loving country.

THE PANAMA CANAL TREATY.

The ratification, by the Senate of the United States, in special session, on the 17th day of March, 1903, of the treaty

with the Republic of Colombia, probably definitely settles the controversy relating to the construction of the Canal, uniting the Atlantic with the Pacific. The adoption in June, 1902, by Congress, of the recommendation of the Commission, to select the Isthmus of Panama as the route for this inter-oceanic passage, fell upon the country as a great surprise. For many years Nicaragua was alone considered feasible. The scandal attaching to the Panama route had left it beyond the pale of merited consideration. The benefits of the Nicaragua route had been so earnestly and eloquently imparted to us, that we had no other thought than its final selection.

This treaty has many remarkable provisions, and chief among them is Article IV. "The rights and privileges granted to the United States by the terms of this convention shall not affect the sovereignty of the Republic of Colombia over the the territory within whose boundaries such rights and privileges are to be exercised. The United States freely acknowledges and recognizes the sovereignty, and disavows any intention to impair it in any way whatever, or to increase its territory at the expense of Columbia or any of the sister republics in Central or South America; but, on the contrary, it desires to strengthen the power of the republics on this continent, and to promote, develop and maintain their prosperity and independence."

It may be, that the law of Columbia rendered this stipulation imperative, still it remains a reasonable inquiry why the United States should enter into a contract of such momentous undertakings, without the right of absolute dominion. That the sovereignty of this country should be supreme, would overcome any item of expense or delay. The munificent rental to be paid annually would seem to demand the control of the Canal, even to the cession of the six-mile territorial zone. There is abundant opportunity for a display of legal skill, in the proper execution and construction of the contract. The administra-

tion of the laws will be conducted jointly by the two governments. The courts may be said to be unique in their creation, and in their respective jurisdictions are somewhat anomalous. We are only primarily interested in one of the courts, for which provision is made by the treaty. Controversies between the citizens of the United States and Colombia are committed to the jurisdiction of courts appointed by both Republics. This untried judicature is necessarily experimental, and will be watched with keen interest as a radical departure from accustomed tribunals. The citizens of the United States will rely upon the recognized superior methods of procedure in this country, as well as its advanced ideas of justice, to overcome local surroundings. We may be safe, however, in the conclusion that the United States can well protect the rights of its citizens.

The munificence, as well as the magnanimity of the United States, is apparent throughout the entire transaction; and this virtue is to be commended in any great power, dealing with the weak and unprotected. A kindred example of this magnanimity will forever illumine the pages of advanced good governments, when the United States, as a conqueror, transported, without cost, the vanquished foe homeward, and paid twenty millions for territory which by right of war and conquest it had acquired, although we must assume that this was an act for the civilization of the benighted, rather than compensation for the undesired article; and let us trust that it will serve as a restoration of a people from the thralldom of despotism, instead of enforced ownership upon us. This treaty remains unconfirmed by the Colombian Government, but it is scarcely probable that it will be rejected, through any legitimate reason. The antagonizing lobbyist is now understood to be at Bogota, with the view of increasing the demands upon the United States.

THE CUBAN TREATY.

Let me make brief reference to the recent commercial convention with the Republic of Cuba, frequently designated as the Cuban Reciprocity Treaty. Its legal tendencies and probabilities are significant, and the relations of the United States to the new Republic render it somewhat unique in government interdealings and diplomatic economics. This Island of the Sea, marvelous in the fertility and productiveness of its soil, great in its internal wealth, peopled with patriots struggling for liberty, has suddenly evolved from servitude, famine and despair, into an independent sovereignty.

The United States has not only fulfilled its obligations to Cuba, but has maintained its good faith, with all nations, that the freedom of Cuba should be for its people, and not for the aggrandizement of this country. Having a form of government patterned after its foster-mother, guided by American principles, stirred by American success, we may expect from Cuba remarkable development within the next decade. Weak as compared with other nations, yet in the consciousness that it lies in the shadow of a mighty power, it flies its pennant *noli me tangere*, as it presses forward in the achievement of national renown. The grip of the conqueror loosened, the desire for suzerainty was smothered and absolute freedom became the heritage of every citizen. History has not recorded a more chivalrous deed for humanity and civilization.

The United States has emphasized its fair dealing in an unmistakable manner, through its treaty-making power. Cuba is immediately lifted to the high standard of the greatest of nations, and the commercial relationship is consummated through respective accredited plenipotentiaries. The reciprocal engagements are formed, and corresponding concessions are each to the other yielded, "animated by the desire to strengthen the bonds of friendship between two countries,

and to facilitate their commercial intercourse by improving conditions of trade between them." Under its provisions the convention continues in force for a period of five years from the date it becomes effective, and from year to year thereafter, until the expiration of one year from the time the contracting parties give notice of an intention to terminate it. The general trend of the convention is a rebate from the Customs Tariff of the Republic of Cuba and the United States Tariff Act of July 24, 1897, and this rebate is limited to each other, without modification, as to other countries. The public seems to think that the treaty has nothing in it but sugar. This is a serious error, but we recognize it as the most important article with which the treaty deals. The preferential duty rates rest upon the condition that no native sugar imported from Cuba shall be admitted into the United States at a reduction of duty greater than twenty per centum of the rates provided by the United States Tariff Act, and that, no sugar the product of any other foreign country, shall be admitted into the United States at a lower rate than is provided by the present Tariff Act.

This condition in Article Eight of the Convention is a marked concession in favor of Cuba over other foreign countries, and it may be expected that the latter will claim that a discrimination exists against them. This provision had serious opposition from those producing sugar from the Kansas beet, as well as from the Louisiana cane, and differences did not exist according to party lines.

The relation of the House to this measure is not clear in its legal phases. The question may be properly made, that with the Treaty-making power the House has no concern; and it will also be claimed that the Treaty has revenue features which must originate in the House. There is no apt case serving as a precedent, and we have sufficient range for technical legal complications. The Senate has endeavored to

solve this difficulty by the stipulation that this Treaty shall not take effect until the same shall have been approved by the Congress. It is quite evident that a number of Senators would not have voted for the ratification of the Treaty without affording to the Congress the opportunity of dealing with it as a revenue measure, and there was also a large contingent opposed to the proposition that the President, with the consent of the Senate, should have power to make such radical changes in the custom laws of the country.

The differentiation between Cuba and other foreign countries suggests that dissatisfaction will arise from European powers, and this becomes apparent in the consideration of the recent Tariff Act adopted by the German Reichstag. The Minister of Finance is clothed with sufficient power to generate difficulties, should he determine that the Cuban Treaty discriminates against German exports. The advantage thus extended to Cuba, over other countries producing sugar, who are not entitled to a like rebate, may be treated as violative of the "most-favored-nation" clause usually inserted in commercial treaties. The case of *Bartram vs. Robertson*, 122 U. S., 166, is instructive on this point. The plaintiffs, who were merchants in the City of New York, imported sugar and molasses from the Island of St. Croix, under the dominion of Denmark. It was claimed that these goods should be admitted free of duty, under the treaty with Denmark, because like articles, the product of the Hawaiian Islands were, under a treaty with their King, and the Act of Congress, to carry that treaty into operation, admitted free of duty. The Court held that the Treaty with Denmark does not bind the United States to extend to that country, without compensation, privileges which they conceded to the Hawaiian Islands in exchange for valuable concessions. This adjudication solves the rights of parties, in so far as the courts of this country can determine them, but quite a serious and different propo-

sition arises when European powers, conceiving that discrimination exists, choose to create a different rule, through their retaliatory legislative agencies.

This grievance may be a pretext for another. Such has been history throughout all ages. A suitable opportunity now exists for the United States to release its tenure on the Philippines, by a conveyance to Great Britain, France, Germany and Japan, in trust for the protection and civilization of the Islands.

It may be permissible to refer to a subject oft-threshed in the early days of the Colonies. In recent years events have occurred which, if earlier foreseen, would have doubtless placed the Vice-President in a position materially different from that designated under the terms of the Constitution. Congress, in its dealings with innumerable matters, and many of minor importance, has left in painful solitude the presiding officer of the Senate.

The student of republican principles would unhesitatingly assume that the Vice-President should be a member of the Presidential family. There is no good reason why he should not be an essential factor in the conduct of the Government's affairs, and in shaping its policies; and there is every reason why he should be linked to the management and direction of the policies of the administering power.

The position is that of extreme dignity and exalted honor. He wears a crown, but carries no sceptre. He has a title, without a claim to nobility. He lives upon the lips of every voter during the progress of the election, and thereafter slips away into a state of forgotten memory. What per centage of intelligent business men can name the distinguished gentlemen who have filled this chair during the past decade?

The cravings of the American statesman are not content with mere temporary distinction, and he is not willing to be classed as an expectant legatee, under the last will of the

people, expressed in the instrument known as the ballot-box.

There are now cogent reasons, which may not heretofore have existed, why he should be authorized to speak on momentous questions. The growth of the country, its unforeseen development, its giant stride for supremacy among the older nations, the universal renown which it enjoys in the civilization of the century, has no place for an automaton.

He may vote, on accidental occasions,—if there is a tie among the Senators. This is such a rare privilege, that it may be regarded as an appendage to the office, rather than an endowment of authority. His power to appoint committees, shaping the course of legislation, has been practically destroyed. The treaties with foreign governments are made by the President, with the advice and consent of the Senate, but the voice of the Vice-President is silent. While he cannot enjoy the honors of some great international bargains, there is recompense in the thought that he is without responsibility to the public, in its disapproval of the measures.

A mixed and diametric population, having varied ideas of government, renders it desirable that the Vice-President should be entitled to membership in the Cabinet. In the event of succession to the Presidency, during the term for which he has been elected, he enters under present conditions without experience in perpetuating a policy of improvement, however desirable its continuance may be. No business institution would tolerate such a possibility. According to precedent, the Vice-President is selected from a State different from that of the President's residence, and we may conjecture, as a sensible reason for it, that by interchange of views each would be the better acquainted with the necessities of the people. We may expand the confines of our country, because there is no Asiatic "Monroe Doctrine," but let us be

careful that a limitation is preserved against the eligibility of a Kalakua and an Aguinaldo.

THE FEDERAL COURTS.

The Federal Courts have grown largely in public favor in recent years. The multiplied number indicates that they serve satisfactorily the demands of the public as well as litigants. Congress is constantly importuned for the creation of new divisions and the location of courts at additional points. This is demanded as a matter of convenience. The effort to curtail the influence of these courts has only resulted in the demand for an increase in number.

The business of the Supreme Court of the United States had become congested, and an appeal was not expected, in the regular course of business, to be heard in less than three years. An effort was made to furnish relief to the overburdened docket, and the Act to establish the Circuit Courts of Appeal, known as the Evarts Act, was passed. It is clear that without these courts there would be a denial of justice. Lawyers grow pessimistic, and deplore the decadence of the profession and the dearth of business in the future. This is altogether an error. The business for lawyers is greater, and the volume of litigation has become magnified. The vast number of Federal cases leaves no doubt of this fact. Only twelve years have elapsed since the Circuit Courts of Appeal were created, and from time to time a number of judges have been added, and we may confidently expect within the next two years that each court will consist of five judges. It is now recognized that the jurisdiction of the Supreme Court must be further restricted. Appeals must be limited to constitutional principles, questions of treaties, commerce and the national revenue.

The Judges of the Courts of Appeal should not be required to preside over *nisi prius* causes. They should only

hear the appellate cases. The present system of District Judges should be changed, and these judges made in name, as they are in effect, Circuit Judges. I may step further and say, that the vast horde of causes in violation of the revenue, postal or timber laws, should not be charged against the present District Judge. It is needful to dispose of such cases speedily, and the present delay results in crowding out of hearing civil causes of great importance. The criminal branch should be so separated from the civil—law and equity—cases, that it should be a separate court, presided over by a judge for criminal cases only.

The American law has grown up through the deliverances of the State Judges. The erudition of the State courts throughout the past has shown in splendor. Logic became rehabilitated, and the field for argument became bright and fresh in the deductions and reasoning developments of the master minds presiding over many of the State courts.

The law was constructed upon solid thought and comprehensive consideration, and was not dependent upon the afflictions of the present day, in the form of cases innumerable, padded text-books, and encyclopedias of erroneous statement.

I am not unmindful of the great learning exhibited by the Federal Judges, and it is from this source that we have been taught the great tenets of constitutional law. The rights in property, commercial law, provisional remedies, domestic relations and equitable doctrines, have been thrown upon the canvass for the study and admiration of the coming generations by State Judges. Has this influence been checked? Is their lustre less brilliant than in former years? In the past decade the Federal courts on these questions have made a giant step forward. The personnel of these courts is striking. It is a rare instance when a lawyer is disappointed in the Federal Judge before whom he appears.

The questions involved in commercial life have leaped into the arena of the Federal courts, and the pronouncements of the Judges have stirred the best thought of the profession, and challenged the most exalted admiration.

Surely I am not to be understood as indicating the decadence of the State Bench, but the elective system is on severe trial, and paralleling it, with that of the Federal system, we have a race to be won only by the stronger. The rotary system, with the lottery attachment, provided for in our Constitution, is of doubtful expediency.

In the early history of the Supreme Court there were a few cases ranking in the highest degree of national importance. The argument of these causes commanded the talent of America, and the entire country remained in suspense during the deliberations of the court, anticipating the final decisions, as the triumph or overthrow, according to individual predilections of the principles of liberty, announced in the Declaration of Independence. Cases of equal dignity have been before the court in the past decade. The Legal Tender Cases, the Slaughter House Cases, the Income Tax Cases, the Insular Cases have never been magnified in their far-reaching importance in the development and maintenance of the teachings of our fathers.

The case of *Champion vs. Ames*, decided February 23, 1903, is probably the most significant of all national causes at the last term. The case was an appeal from an order dismissing a writ of *habeas corpus*, and involved the constitutionality of the act of Congress of March 2, 1893, entitled "An Act for the Suppression of Lottery Traffic through National and Inter-state Commerce and the Postal Service, subject to the jurisdiction and laws of the United States." The defendant was indicted for a conspiracy, with others, for violating the first section of the act, in the disposition of tickets for the monthly drawing of the Pan American Lot-

tery Company, at Asuncion, Paraguay, and sending the same by express from Dallas, in the State of Texas, to Fresno, in the State of California. Every prior device to conduct a lottery scheme, within the reach of the people of the United States had failed. Lotteries were no longer tolerated. They were forbidden entrance into the mails, and the covert expediency of the Express Companies was denied them by the Act of 1895. The lottery business was at the last ditch, and it openly defied the Act of Congress, and made aggressive war upon it, as an infringement of civil liberty, violating the Federal Constitution.

The statute was maintained, as a proper exercise of the power to regulate inter-state commerce. This case is worthy of the attention of the busiest in the profession. While lotteries cannot survive, the views here announced touch every moneyed evil which is susceptible of being conducted through means of transportation from one state to another.

It is true that the decision is from a divided court, and so were the decisions in each of the cases just mentioned. It has become a matter of remark that all great cases are decided by divided courts, and the possible power of one man is sounded as a midnight alarm. The case of the Northern Securities Company has been determined by four Circuit Judges, speaking in unanimity. Should this cause be reversed on appeal, by a divided court, five Judges favoring the validity of the merger, we would have eight Judges denying the validity of amalgamation. This is an extreme supposition, but it serves well to illustrate the point of criticism, which, if permissible in the press, is not excusable in the legal profession. The judgments of courts are not affected by the number concurring in the opinion of final result. The judgment is the judgment of the court. Is it reasonable to expect a unanimous opinion on great questions? What makes these cases except the difference in opinions among great lawyers and

experienced men of affairs? These differences must be adjusted, and the litigation is launched as the only means to that end. Having been determined, the machinery of the Government moves smoothly, until the progressive demands of a great country, filled with great interests, generates a further disturbing element, which is ultimately settled in the same way.

THE BANKRUPTCY ACT.

The advantages of a periodical Bankrupt law have been always recognized. The Act of 1867 did not give satisfaction, and had a short life, considering the eventful epoch through which the country had passed. The necessity for the Act was apparent, and its early repeal was regretted, an insufficient opportunity having been afforded to test its real merits. Its benefits, however, were realized, and for several years commercial interests again demanded relief through this channel. The Act, Approved July 1, 1898, was the result of the recognized need for the measure. From the former acts much experience had been gathered; and the extensive discussion of the subject through the press, and trade journals served to create the belief that a law satisfactory to the debtor and the creditor classes could be readily prepared. In a brief while two very serious objections became manifestly apparent, and it may appear singular that each of them were against the creditor classes, who had been so diligent in procuring the passage of the law.

The construction given to Section 60 (A) by the Supreme Court created a hardship and altogether unforeseen result. This section provides that a person shall be deemed to have given a preference, if, being insolvent, he made a transfer of any of his property, enabling any one of his creditors to obtain a greater per centage of his debt than any other creditors of the same class. The casual observer, or the critical merchant, would be slow to conclude that a payment of money on

general account was a transfer of property, within the meaning of the act. In the ordinary transactions of commercial life no one speaks of the partial payment by check, or in money, as a transfer of property; and a construction reaching this conclusion is criticised as highly technical, and beyond the intention of the lawmaker. Certainly it was not in the mind of the promoters of the law.

In *Pirie vs. Chicago Title and Trust Company*, 182 U. S., p. 438, it is held that the statute means, that a transfer of property includes the giving or conveying anything of value, anything which has debt paying or debt securing power, and that a payment in money is a transfer of property. A payment of money, under named conditions, operating as a preference to the creditor, it was further held, that, although acquired in good faith, by the creditor, it must be surrendered, as a condition to the right of proving the remainder of the claim against the estate of the Bankrupt. The analysis is, a creditor receiving a partial payment, without knowledge of the insolvency of his debtor, within four months of bankruptcy, must surrender the payments, otherwise he is without right to file his claim against the estate for the collection of the residue. The far-reaching effect of this decision is familiar to the profession, and it has not met with the approval which the courts' decisions are usually entitled to receive. Business was shocked over this unexpected result. The acceptance of every partial payment was attended with risk, and the question became live, whether the creditor should retain the partial payment and surrender the remainder of his claim, or return the payment and prove his claim. I have not yet heard of the creditor who chose the latter course. The consensus of opinion was that a change was absolutely necessary.

The Act, Sec. 57 g., reads: "The claim of creditors who

have received preferences shall not be allowed unless creditors surrender their preferences."

The Amendatory Act, February 5, 1903, provides that the claims of creditors who have received preferences, voidable under Section 60 b. or to whom conveyances, voidable under Section 67 e, have been made, shall not be allowed unless creditors surrender such preferences and conveyances.

Section 60 b. reads: "If a bankrupt shall have given a preference, and a person receiving it, or to be benefited thereby, or his agent acting therein, shall have reasonable cause to believe that it was intended thereby to give preference, it shall be voidable by the trustee, and he may recover the property, or its value, from such person."

We may properly construe the amended provision, and say: if the creditor had no reasonable cause to believe that a preference was intended, he has a right to retain the partial payment, and prove the balance of his demand against the estate of the Bankrupt. It is well known that this was the purpose of the amendment.

Since the passage of the Amendatory Act, and, on the 27th day of April, 1908, the Supreme Court, in the case of Jaquith v. Alden, construing the original law, holds that payments by the vendees on a running account for goods which were sold and delivered, after they had become insolvent, when received by the vendor, in the regular course of business, and without idea or intention on his part of obtaining a preference thereby, are not preferences within the meaning of the bankruptcy act. This case is distinguished from the Pirie case, with the remark that the facts are entirely different. The dissenting Judges do not recognize the distinction, and by no means is it clear that there is a material difference in the facts of the two cases. The latter case, however, is obviously more equitable.

The time within which such payments should be deemed to be

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preferential was also held, in the Pirie case, to be four months next preceding the bankruptcy of the debtor. The Amenda-tory Act removes all doubt on the subject, providing, that such preferences thus to be avoided must have been made within four months before the filing of the petition, or after the filing of the petition and before the adjudication.

Under the Act of 1867 the jurisdiction of the Federal Court was concurrent with the State Court. It is indispensable to the due administration of the Bankrupt Estate that the Federal Court, as a court of primary jurisdiction, should have the right to determine the validity of all preferences, and the power to reach every fraudulent disposition of property within the State in which the Bankrupt proceedings are pending. It is an anomaly in the law for the court of primary jurisdiction to be divested of the power to collect the assets which it is required to administer. The first thought is to focalize this power, in order that all questions may be promptly decided, and in the same way; and, in the framing of a statute, the phraseology should be unmistakably clear.

The Act of 1898 was strikingly imperfect on this point, and I may say somewhat paradoxical. The language seems plain. Statutes are construed according to the terms employed, yet, we know how radically different was the intention of Congress. Concurrent jurisdiction was evidently intended, but section 23 (b) provides: "Suits by Trustees shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them, if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant." The construction of this provision of the statute varied in the different Federal Courts,—some holding that the language was so clear that the question was not debatable, and that the State Courts had exclusive jurisdiction, while others held that Congress could not possibly

have intended to leave the jurisdiction in the State Court, and, therefore, the Federal Courts had concurrent jurisdiction with the State Courts. The Court of Appeals for the Fifth Circuit, in *Camp vs. Zellars*, 94 Fed. Rep., 799, citing *Bernheimer vs. Bryan*, 93 Fed. Rep. 767, decided early, that the District Court of the United States, as a Court of Bankruptcy, had no jurisdiction of a petition by a trustee in bankruptcy, to cancel a fraudulent conveyance by the bankrupt. There were a number of decisions following, which held the same view; while there were others, holding the contrary opinion. Among the latter may be mentioned; In *Re Newberry*, 97 Fed. Rep., 91. *Pepperdine vs. Headley*, 98 Fed. Rep., 868. *Norcross vs. Nathan*, 99 Fed. Rep., 414. *Lehman vs. Crosby*, 99 Fed. Rep., 542. *Cox vs. Wall*, 99 Fed. Rep., 546. In *Re Woodbury*, 98 Fed. Rep., 833.

The jurisdiction was, therefore, unsettled, but it was finally put to rest by the Supreme Court of the United States in *Bardes vs. First National Bank of Hawarden*, 178 U. S., 524, holding that the District Courts of the United States did not have the jurisdiction.

Mr. Justice Gray, speaking for the Court, referring to the Acts of 1841, 1867 and 1898, says: "We find it impossible to infer that when Congress, in framing the act of 1898, entirely omitted any similar provision, and substituted the restricted provisions of Section 23, it intended that either of those Courts should retain the jurisdiction which it had under the obsolete provisions of the earlier acts."

The Courts of Bankruptcy having no jurisdiction for the collection of fraudulent preferences, or the cancellation of fraudulent conveyances, the trustee was required to proceed in the State Courts, however scattered the causes of action might be, and regardless of the delays incident to the congested condition of some dockets, while the parent case remained in the Bankrupt Court, as patient as a mile-post,

awaiting the returns from the different State Courts. It is, doubtless, the experience of the profession, that the trustee was unable to make any successful effort, and the purpose of the involuntary proceeding was practically defeated.

The Congress readily avoided this disturbing effect, and in the Amendment of 1903, provides. "And, for the purpose of such recovery, any Court of bankruptcy, as hereinbefore defined, and any State Court which would have had jurisdiction, if bankruptcy had not intervened, shall have concurrent jurisdiction."

There are other amendatory provisions, worthy of mention.

The application by the Bankrupt for a Receiver, or the appointment of a Receiver, because of insolvency, are acts of bankruptcy.

A mining corporation may become a bankrupt, and the bankruptcy of the corporation does not release the officers, directors or stockholders from liabilities created under State laws.

The discharge of the bankrupt can now be defeated, if he obtained property on credit by a material false statement in writing, made for the purpose of obtaining property on credit; and the transfer, removal, destruction, or concealment of property, with intent to hinder, delay or defraud his creditors, is ground for refusing the bankrupt a discharge.

*The waiver of the right to claim property as exempt is mainly a localism, and all will not agree that it should properly become a part of a bankrupt law, which must be uniform throughout the United States. This waiver voluntarily deprives him of the exemption right, but, bankruptcy is often sought as an antidote for the restoration of the property. The conclusion reached in *Re Moore*, 112 Fed. Rep.,

*The case of *Lockwood vs. Exchange Bank* has been decided by the Supreme Court since this paragraph was written. The difficulties suggested are met, the Court holding that the bankrupt's discharge may be withheld for a reasonable time, pending proceedings in the State Court for the enforcement of the waiver contract.

289, suggests that the statute should be amended so as to provide for the preservation of the waiver contract. It may be necessary to die, in order to live, but it is not seemly that the bankrupt should live upon that which he contracted to surrender to his creditor. Without right to claim the property, otherwise exempt, against the waiver, the proceeding in bankruptcy restores the right, and the bankruptcy of the debtor becomes a profitable investment.

NORTHERN SECURITIES COMPANY.

The wide discussion of this case may render idle any reference to it, but its importance demands a place in our consideration. The decision, as announced, did not come as a surprise to the profession; and it appears that the parties in interest were prepared for it,—if not fortified against it. A subject of national consequence, keen, bright, and sharp-edged, has awakened the public thought. Some are amidst apprehensions of financial disaster, while others are happy in the idea that encroaching power has been suddenly checked.

The Sherman Act of July 2nd, 1890, was conceived along the line that a restraint must be laid upon those real or imaginary evils, the outgrowth of moneyed amalgamations. The caption of the law informs us, that it is designed to protect trade and commerce against unlawful restraints and monopolies, and section one, in practically limitless language, declares as illegal, every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations. The thing done,—or, attempted to be done,—if in restraint of interstate trade, whatever it may be, is condemned. The unlimited scope of the Act, receives emphasis by the Court, in that, the employed words comprehend every scheme which may be devised to defeat competition. The cases against the

Trans-Missouri Freight Association, 166 U. S., p. 290, and Addison Pipe & Steel Company, 175 U. S., 211, served as prophecies, now to be fulfilled. The opinions in these cases, are master-pieces of argumentative force, and I may be permitted to say, that the dissenting opinion in the former case, is unexcelled in its logical power, and there we find elements which made Taney great.

The Courts expound the law, but the law-making power has not altogether discovered what is true competition, between railroad organizations. The bankruptcy of one line, will not improve the financial growth of another. Railways having the same termini, traversing different states, do not thrive, and are not successful, in cutting rates fixed by each other. The competitive question is now one of service, attention, dispatch and equipment. A rate war has no favor with the business public and is of short duration. Two mercantile establishments, in the same City, having like capital, are necessarily competitors, but their traffic is upon legitimate lines. Two lawyers at the same Bar, are competitors, but they only restrain trade, at the instance of the client, and under the fiat of the Court. Every legitimate business avocation has within it, those competing for the best results. None are forbidden, certainly not condemned. Two great lines across the Continent, the Eastern terminal of each lies in Minnesota, and the Western terminal of each is at Puget Sound, are judicially made competitors, for the reason that they have the same destination. Every contract between them is not illegal,—only those in restraint of trade. What kind of a contract restrains trade, and how are we to determine when trade is restrained? A uniform rate, in reasonable amount, has no restraining influence upon trade, but who must determine the reasonableness of the rate? If it is reasonable, the result is unchanged. The expense incident to the construction, and the maintenance of these great trans-continental lines, can

only be estimated by experienced men, and by them only can it be logically determined what rate is sufficiently reasonable to pay for the mammoth enterprise of overwhelming benefit to the country. In the absence of such determination, is it fair to assume, that the rates restrain traffic, simply because the lines seek the same business? If these corporations were operating under a system of like rates, resulting in loss, would we say that they are in restraint of trade, violating the Anti-Trust law?

Must we, therefore, conclude that this Company, as a holding corporation, represents an illegal scheme, and must we conclude that because we find a possible motive, under judicial construction, that there is in fact an unlawful combination, inevitably destroying competition? This great opinion, in expounding the law, as it is written, shows that the Sherman Act should be materially modified, with all possible speed, before a state of wreckage, in large enterprises ensues.

The Court say: "It matters not whether, while acting under such a contract, the rate fixed is reasonable or unreasonable, the vice of such a contract or combination, being that it confers the power to establish unreasonable rates in the way of free and unrestricted competition between carriers, who are natural rivals for patronage." This means that any confederated contract, embodying the power to fix rates, is unlawful, notwithstanding the rates are entirely satisfactory to the trade, and the roads could not be maintained at a less rate. We may then deduce the proposition, that the power existing, although never exercised, is under the condemnation law. If no contract exists, no agreed power to formulate rates, exists, and therefore, the shipments may be made, without any violation of the Sherman Act.

The intent of all legislation is to promote beneficial undertakings, or destroy prevailing or threatened evils. If the parties to the compact desired to stifle competition, under the

guise of a contract, the evil is not minified, by annulling the contract, if the evil can be consummated without a contract.

If there was an attempt to restrain trade, in the creation of the Northern Securities Company, why cannot the promoters perform the same alleged injurious acts, without a corporate entity? Is not therefore, the charter of this body, a means of convenience, rather than a fraudulent combination?

Under the terms of the decree, the Securities Company will return to the shareholders in the Northern Pacific and Great Northern Companies, the shares to which they may be respectively entitled. The right of the majority to master and dominate a Company is recognized as lawful, and, indeed, could not otherwise be. If the same persons held this majority in value, and the roads were operated independently, it would not be claimed, that this ownership violated the Act. If illegal, how would the evil be remedied? Not upon the principle that the exalted right of protection of American liberty, must yield to the supremacy of inter-state trade, I submit. If the respective Companies are under the direction of different managements, wholly disconnected, then there is no combination,—if they have the same rates, there is no restraint of trade, although the Companies are competitors, and, if a rate is fixed by one, and followed by the other Company, as just and reasonable, no evil motive is suspicioned; and certainly a just and equitable rate adopted by one, at the suggestion of the other, is not in restraint of trade. Yet, an equitable rate established under a contract, having the mere power to restrain trade, between two organizations operating parallel lines, falls under the construction of the statute, and there is a triumphal burst of joy over the downfall of a Trust.

If the Inter-State Commerce Act is inadequate to overcome the matters of difficulty, pointed out in the argument of the

Court, the Congress is clothed with ample power to adopt amendatory measures.

THE SUFFRAGE CASE.

The people of this State, conceived that they possessed the legal right, and were charged with the duty, as conservators of the best interests of the country, to regulate the elective franchise, subject to the Federal Constitutional amendment, providing: "The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude." Article Eight was formulated upon this idea, after mature deliberation. Soon, it became the subject of attack, as violative of the 15th amendment. A bill in equity was filed in the Circuit Court of the United States for the Middle District of Alabama, by Jackson W. Giles against the Registrars of Montgomery County, praying that the defendants be required to enroll his name upon the voting lists. In the majority and dissenting opinions (23 Supreme Court Rep., 639), we find a number of surprising propositions. Just how it could be imagined that a bill in equity was a proper remedial process, it is difficult to imagine. Section 1979 of the revised statutes, relative to the jurisdiction of the Court, in the protection of the "Civil Rights" of the citizen, employs the language: "shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." If this provision does not furnish the equitable jurisdiction, it does not exist. The Court very properly holds, that the sphere of equitable jurisdiction is not extended, recognizing the true boundary between actions at law and suits in equity. Reaching this conclusion, it would seem that the Bill should have been peremptorily dismissed; but the Court after holding that it has

jurisdiction, (and this conclusion seems to have been attained without regard to the character of the action, or the method of procedure,) says: "we cannot forget that we are dealing with a new and extraordinary situation, and we are unwilling to stop short of the final considerations which seem to us to dispose of the case." The plaintiff seeking the establishment of an alleged right, under an alleged fraudulent scheme, and invoking the "King's conscience" to afford him relief, presents a novel feature in equity pleading. Justice Holmes aptly expresses the averment, as a declaration in the air,—presumably a balloon or other floating gaseous receptacle. The Court does not cite the case of *White vs. Berry*, 171 U. S., 366, wherein it is held, that, under the Constitution and laws of the United States, the distinction between common law and equity, as existing in England at the time of the separation of the two countries, has been maintained, although both jurisdictions were vested in the same courts, and approving the rule laid down, in *Re Sawyer*, 120 U. S., 200, that a court of equity had no jurisdiction over the appointment and removal of public officers, and that to sustain a bill in equity to restrain or relieve against proceedings for the removal of public officers, would invade the domain of the courts of common law.

Limited to questions of equitable cognizance, is there any appreciable difference between the cases?

The petitioner's right, if any he has, must be formulated upon the theory, that the constitutional provision, requiring the registry of the name on the voting list, is fraudulent or void; and the action of the Court, if obtained, would be in aid of the fraud. Therefore, the Court, has very properly held, that it could not sanction his demand.

Justice Harlan writes a strong dissenting opinion on the question of jurisdiction, holding however, that the averments of the Bill, if true, entitled the plaintiff to relief, provided,

the record showed a sufficient value in dispute. The value of each of the votes of the five thousand negroes, on behalf of whom the bill was filed, the hypercritic might say, is so easily estimated, that we could not, in Alabama, in connection with it, think of the Federal Jurisdictional amount.

Justice Brewer disposes of the question of jurisdiction, holding that a Federal question is involved. We are startled at the announcement made by the distinguished jurist,—“whether the plaintiff’s remedy was at law or in equity, cannot be considered on this appeal.” Why this is so, in the opinion of the Judge, may be found in the further announcement: “every case coming up on a certificate of jurisdiction may be held to present a constitutional question, and be open for full inquiry in respect to all matters involved.” We glean from the dissenting opinion that he does not assent to the proposition that the case is not strictly a legal one, yet, the proceeding is named a bill in equity, and the prayer shows that it is correctly christened.

We are familiar with the rule of equity practice, that if the Court has jurisdiction for one purpose, the case will be fully administered; but, we are not aware of any such principle prevailing in common-law actions. This, I submit, without a criticising intent.

Two actions were brought in the City Court of Montgomery, by the same party, one for damages, and the other, for a writ of mandamus. The opinions of the Supreme Court of Alabama, affirming the judgment of the City Court, are expressed in comprehensive language, and are clothed in the best thought, and fully maintain the high standard, which the Court has always enjoyed in American jurisprudence.

PEONAGE.

A condition of affairs, which has been said, exists in Alabama, akin to servitude, has been flaunted throughout the

country. What awful thing is it, of which Alabamians are charged as criminals? The offense is advertised as a condition prevailing, and not as individual acts. It is called peonage, and its existence is announced as a startling crime against humanity, and in violation of the thirteenth amendment to the Federal Constitution.

Obedience to the law, is the highest degree of patriotism. Personal liberty is cherished by every Alabamian, and in its maintenance, the horrors of war arose, and wrought destruction everywhere. A few yet remain to tell how their comrades fell upon the field, the sufferings they endured, the sacrifices they made, the black pall of bankruptcy and desolation following as a wake,—all, for the sake of personal liberty, as they conceived it. This spirit lives in the present generation, and we are slow to accept any statement of an existing vassalage.

In New Mexico, it was formerly permissible, for an inhabitant to pledge his time and labor, as security for the fulfillment of an obligation whereby he was furnished with life's sustenance. It was a voluntary contract. Through its terms, the person was provided with the means of living, and as the burden of debt increased, the tenure of contract continued. A man of wealth, providing for a large number of the poorer class, soon found that he had a retinue of peons following his command, and the odium of the custom, arose from the abuse of the contractual relation. In the case of *Mariana Jeremello vs. Jose De Le Cruz Romero*, 1 *Gildersleeves'* (New Mexico) Reports, Judge Benedict presents a learned statement of the system.

The thirteenth amendment was declared ratified December 18, 1865, thereby abolishing slavery in the United States. The practice prevailing in the Territory of New Mexico, was brought to the attention of Congress, and on the 2nd day of March, 1867, Section 1990 of the Revised Statutes was en-

acted abolishing the system, which only existed in New Mexico. The fact, that it was made to apply to every State and Territory, was to make of the statute, a general law. This is manifest from the reading of the following section, in connection with section 1991, providing that every person in the military or civil service, in the Territory of New Mexico shall aid in the enforcement of the statute. This requirement of aid, is limited, by its terms, to New Mexico.

Political disorders discover readily every movement or condition, which may be the subject of disapproval. The occasion was ripe for this discovery, when the Constitution of 1901, became operative, practically eliminating the negro from the political arena. The statute, known as the criminal contract law, approved March 6, 1901, has been interpreted to mean kinship to New Mexico peonage. A system of surveillance has been established in Alabama and Georgia, entailing a heavy moneyed expenditure. The result is, that it is claimed that the Alabama statute is unconstitutional, and, therefore, parties operating under it, are indictable under section 5526 of the Revised Statutes, of the United States, providing punishment for the practice of peonage.

The intent of the Act of 1901, is clear to every one acquainted with the tenant system. As a rule, altogether irresponsible, do we find the tenant, and dependent upon the landlord for maintenance pending the growing crop. The landlord, furnishing supplies, we must admit, is entitled to protection against the improvident tenant, who abandons the crop. Unless there is some restraining power, the crop is uncultivated and the landlord loses the value of his supplies. No question would arise, as to the validity of a statute, providing for punishment of those who procured supplies from the landlord with intent to defraud. The difficulty of showing this intent, independent of the act of abandonment, is

clear. If the criminal intent is not affirmatively shown, such a statute would not be violated. The loss to the landlord is irreparable, and ruin confronts him, unless he can protect himself against the perfidy or carelessness of the tenant. Dependent as he is, upon the landlord, is there any sound reason, why the tenant should not be required to perform his contract? Under a proper administration of such laws, no conflicts should arise. The abuse of the law, however, should not be tolerated, and under no conditions should it serve as a cloak of oppression. If the Federal statute is violated, in the exercise of the rights and duties authorized and imposed by the State statute, an internecine strife is immediately launched.

If the State statute is unconstitutional, is the landlord subject to prosecution under the Federal statute? The question may be answered, by inquiring whether the act done, under the State statute, is condemned under the terms of the Federal Statute. It would seem that the Federal Statute is not violated, unless the terms of the State statute have been abused, by exercising a mastery not therein provided. Peonage in its technical sense, and proper application, is not prohibited by the Thirteenth Amendment, relating as it does only to slavery and involuntary servitude. To this extent, the Federal Statute, is unconstitutional, as unwarranted by the fundamental law.

It is suggested, that a method of protection be afforded the landlord, other than by statutes, which provoke dissension, and bring into captious review the honor and loyalty of our people.

OUR LEGISLATURE.

The demand for a new organic law arises from the desire to obviate objectionable provisions of the existing instrument; and create other features which are deemed necessary

under changed conditions. Such were the influences actuating the adoption of the Constitution of 1901. It is not within my province to review the present Constitution, nor would the limits of my remarks justify a discussion of it.

The session of the Legislature following the adoption of a Constitution is always important. Many measures in the Constitution are not self-executing, and life must be breathed into them through the medium of the Legislature. The procedure of certain provisions has no place in the fundamental law and can only be defined by legislative act. The method of accomplishing such results requires skill in the highest degree and demands the best talent. Necessarily do we encounter opinions materially at variance in the final settlement of such questions. The Legislature of 1903 has a membership equal to the emergencies, and while action has been apparently slow and uneventful, this is attributable to the wisdom of care-taking, and the caution of experience.

Local legislation, wherever it may be found permissible, is an abundant vegetation with such a degree of miasmatic contagion that the public becomes feverish to escape the malady.

Section 104 of the Constitution, with its schedule of forbidden local matters, was designed to prevent legislation of a private nature, and, at the same time, serve to assist members in looking after public matters, to the exclusion of private affairs of their friends, so grievously a source of annoyance, which they could not otherwise overcome.

In this connection it is a surprise that the schedule omitted so many matters which it now seems could have been condemned, thereby avoiding much legislation of a semi-private nature. Laws of general utility however, have been passed and the work has been well done.

The revenue law is of primary importance. The wisdom of the constitutional provision requiring the formulation of a law by certain officers in advance of the assembling of the

Legislature, has been demonstrated. It is prepared by those having knowledge of the needs of the State and by whom it must be executed. Very properly, it is fruitful in reaching every species of property, and every vocation which should contribute to the support of the government. The chief innovation which we catch under this law is the tax payable upon mortgages. This tax is 15 cents per hundred dollars, which must be paid when the mortgage or other kindred instrument is filed for record. Some criticism has been made that the law should remain as it was formerly, requiring mortgages to be taxed as other personal property. In my judgment, the provision is wise, and will far outweigh the revenue acquired under the former law. Properly administered, there is no escape from this tax in the filings of large corporate mortgages, which have heretofore, in many instances, avoided the law, as being non-taxable. It is not clear that this law will admit of any successful litigation by foreign Trustees or Mortgagees.

The Amendatory Corporation Act affords very essential relief. The Constitution of 1901, forbidding private legislation, left a corporation chartered by the general assembly prior to 1867, without any possible opportunity to alter or amend its charter. The limitations of Section 1283 of the Code were evidently accidental; and happily, this difficulty has been removed by an amendment.

The volume of the country's business is now accomplished through corporate organizations. Indeed, the magnitude of the business could not otherwise be maintained. The co-operation of men and industries constitutes the power in the development of the resources of the country and the interests of the business public. Under the Code, the merger of incorporated bodies, pending the meeting of joint shareholders left the constituent Companies in an unanchored condition, with no remedy save an unsatisfactory and doubtful contract

covering the interregnum. The Act of March 20th, 1903, endeavors to supply the needs of this case, but it unfortunately excludes all corporations having the right of eminent domain. As manufacturing corporations possess the right of eminent domain, they are excluded. Very manifestly, this is an oversight in the Legislature, which should be corrected.

The amendments relative to the renewal and extension of the charter of corporations is timely, providing a clear and simple procedure. The organization of corporations remains unnecessarily complex. We should have a general incorporation law, constructed upon lines easily comprehended and free from difficulty in execution.

The Act to create a Text Book Commission, and to provide a uniform series of Text Books in the public free schools is of much consequence. The advisability of such measures has occasioned much debate and some litigation has ensued in other states. It is wise to leave to those engaged in educational pursuits, the power to determine the best sources of education and the administration of school affairs, although we may not quite agree as to detail matter. The requirement as to branches of study, concludes with the proviso, "that none of said text-books shall contain anything of a partisan or sectarian character." This exception is dangerous in the extreme, as a limitation upon the power, as well as the judgment of the Commission. A few words could not have been better coined for the creation of litigation. We may hope, however, that the sting of the hornet will not be found in it.

We have now an Elective Railroad Commission. A mere mention of this Bill may suffice, as its provisions are familiar to every one. Having tried an Appointive Commission, an Elective Commission may satisfy us that we do not need any Commission. If the State were engaged in the Banking bus-

iness, men versed in Banking would doubtless be employed. Lawyers would be retained to defend the State's affairs in matters of litigation. State employes hurriedly send for a physician to attend the personal injuries of a helpless convict. A conflagration at the Capitol would be announced over the 'phone to the Fire Department. Reverse the simile: we see the New York Limited approaching—the engine is the latest improved Baldwin pattern—the train is electric lighted, consisting of twelve vestibule sleepers, with five hundred passengers aboard, and at the throttle of this costly and magnificent equipment we find,—not an experienced engineer, but our familiar friend—the hack-driver. Does this overdraw the picture presented by the Act, when the State, in taking semi-control of a Railroad—its vast interests and difficult problems in finance, labor and commerce, changes the order of things and says: "No person owning any stock in any Railroad corporation or any person owning or operating a Railroad in this State, shall be eligible to the office of Railroad Commissioner."

The Act to regulate the employment of minors in factories and manufacturing establishments, ordinarily known as the "Child's Labor Bill," after many ineffectual efforts on the part of its votaries, has become a law. The measure seems entirely satisfactory to the factories, as well as the promoters of this legislation.

Osteopathy cannot hereafter flourish in Alabama. The certificate of the Medical Association cannot be easily obtained by its practitioners, and it may be said that by force of law, its practice will not hereafter be followed in this State.

A general act authorizing any municipality to refund its obligations is timely. Many of our cities and towns are financially involved, owing to the constitutional limitations upon taxation heretofore existing. Relief may now be attained through the broad and ample terms of the recent act.

The Exemption Law needs serious attention. It is designed to help the needy. The present procedure is difficult and only the skilled lawyer can follow it. The practice should be simplified, so that the citizen can readily protect his rights under the Statute. There is an evil prevailing, whereby the creditor through systematic garnishments indirectly deprives the debtor of his exemption right. The employer, rather than be subjected to repeated garnishments, discharges the defendant-debtor, and in dread of this result, the debtor makes the sacrifice of his wages, or creates a mortgage. A contest of the claim of exemption is inaugurated, although it may be well known that the debtor does not own property of the exemption value, the assigned ground being that the statutory schedule is not full and complete. The plaintiff, through the aid of the magistrate, usually meets with success on the issue, and the garnished fund is condemned. The debtor's poverty is a barrier to an appeal. This condition has superinduced the vast number of voluntary petitions in bankruptcy filed on the part of wage-earners.

A sub-division of land, under the provisions of Chapter 109, Article 2 of the Code, when acknowledged and recorded, operates as a conveyance in fee of any street or alley-way, to be held in trust for the uses and purposes intended, as set forth in the plat. If this platted land lies without the territory of a municipal government, who is the Trustee, and by whom are the donated streets to be governed? It may be suggested that definite legislation is needed to relieve this embarrassment.

The Negotiable Instrument Bill, which has passed one branch of the Legislature, should meet with public approval. There may be objections, but they are minor in scope. This Bill has received the endorsement of the American Bar Association, and of several States, and will become valuable by reason of its uniformity with the statutes of other States.

Uniformity throughout the different States is always desirable, and too much stress cannot be laid upon divorce laws, and the acknowledgment and proof of written conveyances.

Some legislation might be desirable relative to the doctrine of a "Reasonable Doubt," which is fast drifting into a shield for the guilty, when all other defenses are dissipated. An intelligent by-stander, listening to the requested instructions offered by the Defendant, is frequently amazed at the open door of escape. It is a salutary rule, however, when administered in proper bounds. It has long existed and doubtless will never be entirely removed. The law had its birth in the Mosaic Code, and in the 17th chapter of Deut., 14th verse, we are told that the penalty of death must not be inflicted until the crime "be told thee, and thou hast heard of it, and inquired diligently and beholdeth it to be true and the thing certain." This language is a patriarchal expression of a reasonable doubt.

LEGISLATION IN OTHER STATES.

Throughout the several States of the Union, there is a marked consensus of opinion for the preservation of health, and, accordingly many States have adopted sanitary measures—homes for the incurable, and hospitals for the diseased. The entire country is also alive to the proposition that its business must hereafter be principally conducted through corporate organizations and the trend of legislation is to simplify the method of procedure, and render definite the liability and responsibility of parties in interest. The report of the Massachusetts Commission is particularly commended to our Legislature for the breadth of wisdom therein manifested.

The Pennsylvania Libel Act is peculiarly drastic. The defense of it, made by the Governor of the State, has caused

very much condemnation and little commendation. If the bill lives, the caricaturist cannot hope to survive.

In Kansas, there is a recent Libel Act with desirable features. A civil action does not lie against a newspaper, unless three days' notice is first given of the intention to file the suit, specifying the defamatory matter, and if it appears that the publication was in good faith, and a retraction is made, actual damages only are recoverable.

Kansas has another Statute, and we must not assume that it is inhospitable by forbidding visitors to eat snakes, lizards and other reptiles.

In Florida a joint Resolution was adopted, providing for the election of United States Senators by the people, but it fell under the vetoing axe of the Governor.

Arkansas has rendered itself prominent in the laws which were passed and which failed to become effective. We are informed that eighty-five such bills did not receive the approval of the Governor.

The New York Act relating to voting machines, is interesting, to the public, as a means of rapid exercise of the elective franchise. While I am not versed in mechanics, the machine seems to possess the technical tests of the gas-meter, but, it must be hoped, is of greater of reliability, in general estimation.

My present purpose is simply to invite your attention to the problems arising in our civic and professional lives since our last session. The treatment of these questions is necessarily superficial and only the crest of the waves of the turbulent sea of national, inter-national, judicial and legislative work have I attempted to touch.

The profession is involved in an internal struggle, which should now be emphasized. No lawyer ever attained true eminence accidentally. The life of the lawyer means unceasing and untiring labor and study. No applicant is enti-

tled to admission to the Bar, unless he is seized with a desire to become a great lawyer. Any mediocre standard means a curtailment of legitimate ambition and consensive inferiority. The struggle to which I refer, and which must be overcome, is the combat between Case Law and Legal Principles. An adjudication of the proposition is amply sufficient for the busy lawyer, whose thought is for a speedy, successful result, and he has no time to wait upon his reflective opponent urging theoretic or fundamental maxims.

At *nisi prius* it is a grotesque sight to see the Plaintiff's Attorney dive into the Digest, and the Defendant's Counsel plunge into the Encyclopedia in response to the Court's inquiry for an authority, instead of having a ready answer to be announced in a scholarly way. The effect in such cases, of comprehensive utterance leaves a definite impression upon the Court, and strengthens the lawyer in his own confidence.

Cultivating the standard of your Code of Ethics, we will put to flight the ambulance-chaser, the personal injury vulture and the commercial weasel, who are casting a dark shadow upon the advancement of the present practitioner. Better things are expected of the profession. The present times demands a Kent to write the Commentaries on existing principles, and a Story to elucidate the Constitution according to modern exigencies. The observance of the tenets of your Association, will develop such men, for we have the material in our midst.

Moses, the lawgiver, and Littleton, the law-maker, centuries apart, but centuries ago breathe upon us to-day, as a single exponent, the solid law of the ages. Modern times have created monumental characters, to mark the pages of history. Some in the spirit, some in the flesh, speak to us in inspiration, of the grandeur of the American Constitution,

and the perpetual liberties it bestows, upon the greatest nation of civilized times.

The great achievements of the past will serve to render more brilliant the law-creating genius of coming days. An honorable profession,—respected because of the integrity of the membership, indispensable, because of the necessity for good government, and eternal, because its origin was the spark from the anvil of the Almighty, flashing chaos into order, rule and law, for the advancement of his people, sanctified by his love,—the supreme law for the redeemed, in the administration of the Everlasting Kingdom.

ANNUAL ADDRESS
BY
HON. EDWARD M. SHEPARD,
ON
"THE PROMISE OF THE ISTHMIAN CANAL."

In the Act of Congress of June 28th, a year ago, culminated a discussion which began with modern times. Hardly had early navigators along the American coasts learned that the Atlantic did not wash the shores of Asia, but was separated by a newly discovered continent from a still greater ocean, than they also knew that at one point these oceans were separated by a neck of land of about the same width as the silver strait which made England an island, and was as harmful to the commerce of the world as that strait was helpful.

The dramatic picture of the first sight of the Pacific by Balboa, three hundred years ago when he "stood silent upon a peak in Darien," put into the imagination of mankind the restless idea, fruitful in spite of its inaccuracy, that the future wealth and glory of the world were to be found in the Pacific; and that, if they were to belong to Europeans, the barrier which shut out their ships from a direct approach to it must, in some way and at some point, be pierced by a water way.

When the Puritans landed on the the coast of New England and the Cavaliers founded the venerable Commonwealth of Virginia, the world had already for nearly a century dreamed of such a water way through the Isthmus of Pan-

ama or the Nicaraguan Lake. Long afterwards, when the grim sobriety of John Quincy Adams was in the White house, and the captivating eloquence of Henry Clay lighted up our foreign dispatches, and Panama was called the "center of the globe," a sort of navel of the earth, in 1824 a congress was summoned at the point to form an Amphictyonic council of all American nations. When President Adams asked for the expenses of our commissioners, he told Congress that, although it did not assure "all or even any of the transcendent benefits to the human race which warmed the conceptions of its first proposer," nevertheless it tended to the "melioration of the conditions of mankind" and to the further triumph of the spirit "which filled the hearts and fired the souls of the immortal founders" of our revolution.

THE PANAMA ROUTE.

Three-quarters of a century after the glory had evaporated from all this, Congress, in the more prosaic but more solid words of the statute enacted a year ago, dedicated the Isthmus of Panama, or, if our efforts there should fail, the route by Nicaragua to the mighty service of mankind. By this act the American people required their President to choose a route across the American Isthmus, and there to construct and operate a canal suitable "for vessels of the largest tonnage and greatest draught now in use." The President was authorized to buy from the French Company the portion of the canal which it had partially built at Panama and the railroad nearby which it had years ago acquired from American builders. But the President was not to pay for such railroad and partially constructed canal more than \$40,000,000. Nor was he to choose the Panama route unless the Republic of Colombia should cede control over the necessary strip of territory six miles wide from the Caribbean Sea to

the Pacific. Nor was the cost of the canal in addition to the payment to the French Company to exceed \$135,000,000—the limit of cost of the Panama Canal being thus fixed at \$175,000,000. If the President should fail to acquire the property of the French Company or if Colombia should refuse a proper concession, then the President was to build a canal upon the more northerly and longer, but in some respects no doubt preferable, Nicaragua route at a cost not exceeding \$180,000,000.

The treaty with Colombia for the right of way has not yet been ratified, nor has the purchase from the French Company been consummated. But it is improbable to the last degree that the Colombians will permit their neighbors at the north to secure the enormous advantages of the canal, or that the transaction with the French Company will be obstructed. A ship canal, able to float the most majestic of ocean steamships and, by its locks, lift them through one of the valleys beneficently cut by nature and deepened by man in the Cordilleran wall at the west of our continent, will be open within the next ten years. During that time the industrial and commercial plans of the world and especially of the United States and still more especially of our Gulf States must be adjusted to the new water way. To this preparatory work public sentiment may wisely be directed. The subject is, therefore, a fit one for assemblages of our profession in States where as here they so perfectly represent public sentiment. I doubt whether the flattering tribute paid by De Tocqueville seventy years ago to the function of American lawyers as publicists be today as applicable to the bar of any other State as to the bar of Alabama. Very certainly the noble tradition that an American lawyer ought to be somewhat of a statesman survives with you better far than in my own State or in any Northern State of which I know. So it is that I dare now venture beyond the limits of strictly professional discussion.

No doubt I bring "coals to Newcastle" when I discuss here the promise of the Isthmian Canal. For no State of the Union is so familiar as yours with Inter-oceanic canal questions. Nor, if engineers and other experts be excepted, is there, I fancy, any body of men more familiar with the group of topics belonging to the canal than the members of your own bar. You have the great advantage of the presence in your own State of a master of all this learning in the venerable statesman who is full of the patriotic zeal and energy of youth. To Senator John T. Morgan, the chairman of the Senate Canal Committee, more than to any single man is due the assurance we now have that the canal is to be built and that it is to be American. No man in public life is to be envied so much as one who has indissolubly joined his name to the performance of a great public service, the results of which remain in the plain sight of mankind. May Senator Morgan and his coadjutor, Senator Pettus, to whom like debt is due by the American people, remain in the full present vigor of their faculties and usefulness, to preside over the dedication of the completed canal, and long after, to rejoice in a glorious realization of its present promise.

HISTORY OF MOVEMENT.

The plan of a canal by either the Nicaragua or the Panama route was crystallized from visions which came to geographers soon after America was known to Europe. For a long time the view of misdirected piety was that, since God had joined together the two Americas, it was not fit for man to put them asunder. The same rule would have forbidden tools to the first mechanics of our race and refused to Galileo the use of the optic glass. It would have kept our race in barbarism: forests would not have been cleared: nor swamps drained: nor mountains pierced with railroads: nor harbor

channels opened. Fortunately, the better and more truly religious idea long since became dominant that the genius of man was itself a divine creation, that human purpose and wisdom were truly inspired to subdue the difficulties of continents and seas. We are told that as early as 1529, a subject of Charles V., King of Spain and Emperor of Germany, planned to connect the two oceans by a canal between the Pacific and Lake Nicaragua. More than a century later, but still two centuries before our time, an able and experienced financier, William Patterson, the principal projector of the Bank of England, dreamed of sending across the Isthmus the commerce between Europe and the East Indies, Japan and China. He sent an industrial army of thousands of Scotchmen and Englishmen to establish New Caledonia on the Isthmus, and paid, in the picturesque failure of that marvelous Darien enterprise a heavy penalty for being several ages ahead of his time. One hundred years later still, Humboldt, perhaps the most famous and wisest of all travelers, declared that the construction of an Isthmian canal would "immortalize a government occupied with the true interests of humanity;" and Goethe, some years after, wondered whether the United States would let the opportunity escape of controlling it. Nor is our own statute of 1902 the first governmental decree for the construction of a canal. Spain, it seems, decreed it in 1814; and the Republic of Nicaragua itself, in 1825. Under President Adams and President Jackson our country made its first investigations. These and other attempts, or plans, or dreams, of former generations are interestingly rehearsed in the reports of the Senate Committee and in other modern literature.

Very certain it is that, by the year 1850, the construction of an Isthmian water-way had become so probable as to be the subject of international rivalries and diplomacy. Then it was that, in a fit of not very far-seeing or genuine mag-

namity, our government made the Clayton-Bulwer treaty with Great Britain. It treated the construction of a ship canal as imminent even then. It pledged each government never to obtain or maintain any exclusive control over the canal. In general it seemed to relate only to the Nicaragua canal; but each government further covenanted to neither fortify, nor occupy, nor colonize, nor exercise any dominion over, any port of Central America. The ink was hardly dry upon this treaty before its short sightedness was obvious. For the Isthmian canal, when constructed, must, it is plain now, and it ought to have been plain then, be an appurtenance of the United States, an essential part of its coast line and of our naval, and perhaps, military defense. In 1850, it is true, the splendid development of our Pacific Coast could not be fully foreseen. Although the treasures of its gold diggings had fired the imagination of venturesome Americans, no one thought of the vastly greater wealth of its agriculture, of its splendid production of fruit and grapes and wine and grain and timber. But even then our interest in the canal might easily have been seen to be different in kind from that of England, and vastly greater in degree. The Clayton-Bulwer treaty, however patriotically intended, was practical unfaithfulness to the Monroe Doctrine and the obvious destiny of the American Republic. The necessary primacy of our country on this continent ought then to have been clear as it had been to Monroe and Adams and Clay a quarter of a century before the treaty was signed. It required a half century to free ourselves from the quasi-partnership established with Great Britain over a truly American interest. After Disraeli had wisely made England the dominant owner of the Suez Canal, we might properly have been more peremptory in asserting our right to the sole ownership and control of whatever canal we should build across the American Isthmus. Senator Morgan's general contention on

this subject was right from the beginning ; and in due time England recognized the wisdom of expressly freeing us from the mistake of the obsolete Clayton-Bulwer covenant. It is doubtful whether that treaty has much delayed the actual construction of the canal. After that really wonderful Frenchman, DeLesseps, had begun his work at Panama, however improvidently or unwisely, it was not ungracious for us to wait. If he should succeed no one ought to deprive him of the glory or grudge the world the benefaction. If he and his associates were not then willing upon fit terms to let the canal become American, then it would not be difficult for the United States to build another canal upon the more northern route. If he were to fail we should rightly profit by the experiment. Apart from American delay incident to the British treaty or the French venture, there had to be a vast deal of popular education in our own country before it would consent to the necessary expenditure. It has been easier to secure from American congresses hundreds of millions for splendid postal and judicial buildings, or for battle-ships, or to clear a hundred smaller harbors, than for a work strictly national and of solid and immediate promise enormously greater. Besides, the secret, though powerful and long prevailing opposition of the trans-continental transportation interests had to be overcome. In looking back at the canal movement, it would be hard to understand why, with such unanimity of lip sentiment there should have been such tardiness of executive achievement, had not those who feared or disliked cheap ocean freights between the Pacific and our Atlantic and Gulf ports, confused and thwarted public sentiment. All the more that such secret opposition had to be overcome, does the country owe a great debt to Alabama for its resolute service in Congress.

WORK TO BEGIN SOON.

Well, the difficulties of the long and romantic struggle are over. Within a few months the President will, with hardly a doubt, name the Isthmian Canal Commissioners, and they will begin their work. Instead of geographical speculations and the industry of pamphleteers, diplomats and statesmen—instead of preliminary surveys and estimates—we shall have the preparation of details, the award of contracts, and the firm, precise labors of American engineers engaged in actual construction. That vast Culebra cut through earth and rock, which is to be eight miles long, and at one point to be nearly three hundred feet deep, with a width of one hundred and fifty feet at the bottom and seven hundred feet at the top; the formation of the two great terminal harbors; the building of titantic locks—all these will provide our current interest in the work. We shall be face to face with the practical problem of the uses and immediate promise of the canal. So that, before long, we shall have to determine upon what principles it is to be administered. What, then, will the Isthmian Canal do for the world, what for the United States, and what for these American commonwealths of yours which front upon the Gulf, and to which the canal will belong more intimately than to any other highly civilized and industrial community of men.

First, the canal will establish between our Pacific ports and the ports of our Atlantic and gulf coasts an exchange of bulky merchandise not possible over two thousand or three thousand or more miles of relatively costly railroad carriage. The American coastwise trade between Portland in Maine, Boston, Providence, New Haven, New York, Philadelphia, Baltimore, Newport News, Norfolk, Wilmington, Charleston, Savannah, Jacksonville, Key West, Mobile New Orleans and Galveston, will be extended to San Francisco, Portland in

Oregon, Seattle, the Mexican ports of Acapulco, Manzanillo and Mazatlan will be included by the way: and they are ports which it is a prime matter of policy on the part of President Diaz to connect by railroad closely with the large resources of the Mexican plateau. New York to-day by sea around Cape Horn is 14,800 miles from San Francisco; by the canal will be but 5,300 miles. New Orleans will be but 4,700 miles from San Francisco instead of 15,000, as it is to-day. The ports of British Columbia and our own Alaska will be added to this coast traffic. We may, perhaps, even include in it some new trade from Atlantic ports with our Hawaiian colony. The navy yards of Pensacola and Mare Island will no longer be separated by the distance over which the Oregon sailed her famous race around South America.

Next is the commercial intimacy certain to be created between American ports and the trans-Andean countries of South America. Their commerce today is chiefly with Europe: when the canal shall be opened it must belong to New Orleans, Mobile, New York. For, while from New Orleans to Valparaiso around Cape Horn is 10,000 miles, or to Callao in Peru 11,000, or to Guayaquil in Ecuador 11,700—by the canal these distances will be but about 4,000, 2,750 and 2,250 miles, an all-decisive saving of 6,000 to 9,000 miles. New York will be nearer to those ports than Liverpool by one half. Nor is the trade of the west coast of South America to be despised. In 1896 it had come to be \$150,000,000, having increased nearly \$50,000,000 in ten years. The trade of Chile, the most important part of that coast, had in fifty years multiplied tenfold, although even fifty years ago it was an old settled country. The trans-Andean trade is worth more to us ten or twenty times over than that trade of the Philippines, for which we have spent thousands of lives and hundreds of millions of treasure, not to speak of the wreck of traditional policy and constitutional scruples.

OCEAN FREIGHT ROUTES.

Next to consider is the establishment of short routes for all ocean freight between our Atlantic and Gulf ports and the ports of Japan and China. Today New York is 17,000 miles from Yokohama around Cape Horn, or 16,200 around the Cape of Good Hope. By the Panama Canal the distance is about 9,600 miles. Today New York is distant from Hong Kong 15,200 miles by Good Hope, which is the shorter route; by the canal the distance will be about 11,250 miles. Japan, therefore, and China, will be brought nearer to our Atlantic and Gulf ports than they are now by distances from 4,000 to 7,000 miles. New Orleans and Mobile will be about as near Hong Kong and the central Chinese ports as are Liverpool and London, and will be nearer the ports of Northern China, Corea and Japan by from 1,500 to 2,500 miles. To the latter ports New York will be nearer than London.

Then there is the improvement of our trade facilities with the Southern Pacific, Australia and New Zealand. New York will be brought within 10,000 miles of Melbourne, the fine metropolis of the Southern hemisphere, and its sister city Sidney, a saving over either the Cape Horn or Cape of Good Hope route of 3,000 miles and more. New Zealand will be distant from New York but 9,000 miles, a saving of 3,000 miles. Those splendid and rising commonwealths of the southern Pacific will be nearer to New York than to Liverpool, and 700 or 800 miles nearer New Orleans than New York. We often forget that the trade of England with their 5,000,000 or 6,000,000 Anglo-Saxon people surpasses her trade with the 350,000,000 people of East India. We need not wonder that Mr. Chamberlain should be eager to build a wall to keep us out. Even if the wall be built, as I do not believe it will, it will be effectively breached by our Isthmian Canal.

Nor ought we to ignore the lesser advantage the canal will bring to Europe in its access to the west coast of South America and other coasts of the Pacific. Patriotic as we are, we ought to be wise and liberal enough to see that, in the long run, whatever will promote the welfare of another great country is likely also to promote the welfare of ours. The dominant character of the new canal in its commercial relations will, however, be American. Europe will in future, as now, reach the Orient by the Suez Canal; and the intimacy of trade between the western coast of South America will not be effected. Almost the entire South American continent, as it rather surprises most Americans to realize, lies to the east of the meridian running through Charleston, South Carolina. Guayaquil, the chief Pacific port of Ecuador, and Charleston have the same of longitude—80 degrees west of Greenwich. Rio, Bahia, Pernambuco and Para on the east coast of South America must forever be commercially as near England as to our Atlantic or Gulf coast. And Calcutta, the Straits Settlement, Bombay, Ceylon must for all time to come be a part of the Peninsular and Oriental route tributary to Marseilles or other Mediterranean ports, or to northern European ports.

DECREE OF NATURE.

The Isthmian canal, is therefore, American by irreversible decree of nature. I honor the courage of M. de Lesseps and his associates and their long unquenched hope to make this American canal a Gallic glory. We must generously concede that it represents a great effort of France to serve mankind as well as herself. Though the money of her peasants and bourgeois was recklessly spent, it was in something more than a provincial or sordid venture. But, even if the French had succeeded, the commercial character of the

Panama Canal could not have been either French nor European. The moment De Lesseps's genius in promotion was crowned with success by the opening of the Suez Canal, the European interest in Panama or Nicaragua became subordinate for all time. The connection of the Mediterranean and Red Seas might well have been of itself a sufficient ground for the cancellation of the Clayton-Bulwer treaty. To our country the canal through the American Isthmus must, for all time, belong; and with its ownership will come high duties as well as great gains.

I believe that no part of the United States will fail to reap a large material, as well as moral and sentimental benefit from the opening of the canal. That western empire of ours on the other side of the Rockies—nearly all of it the creation of the last half century—will no longer be dependent upon railroad transportation which must for all time to come be more costly than water carriage. Indeed, in the economies effected by the new competition established against existing carriers of merchandise or existing sources of supply, or existing markets, we shall find a capital part of our profit from the canal. The ports of our eastern and northeastern States and their industries will be put into new and important relations with peoples with whom their trade today is slight, if it exists at all. And, no doubt, trade relations as yet unimagined will be established by the new canal. It has been the experience of the world that with every opening of a different and better route for commerce, whether by canal or railroad, new centres of industry and new sources of trade have arisen very different from those which have been foreseen. Human prescience cannot, therefore, forecast all the effects of the Isthmian canal or identify the sites of all the cities and all the lines of commerce which it will bring into being. But with respect to one development—and I believe the greatest development—of industry and commerce by the canal, it is

impossible to doubt. That will be here upon the Gulf of Mexico and in the Mississippi Valley tributary to the Gulf of Mexico. Here will be the largest single result of the trans-Isthmian canal. Here the canal will have its best practical vindication.

The famous hydrographer, M. F. Maury, a half century ago, eloquently and with much truth compared the Mediterranean Sea with the Gulf of Mexico, the great eastern arm of the Atlantic with its great western arm. Here, upon this central sea of the Americas, he said, "nature had with lavish hand grouped and arranged in juxtaposition all those physical circumstances which make nations truly great. Here she has laid the foundations for commerce the most magnificent the world has ever seen. * * * Here she has placed in close proximity the natural outlets of her grandest river basin. With unheard-of powers of production, these valleys range through all the producing latitudes of the earth. They embrace every agricultural climate under the sun; they are capable of all variety of production which the world besides can afford. On their green bosom rests the throne of the vegetable kingdom." The future of the Gulf thus foreseen by Admiral Maury has already come; and as yet we have hardly passed the beginning. The Mississippi, he said, "comes down from the grain-producing regions of the north, bearing vessels deeply laden with produce; freighted with all varieties of the fruits of the temperate zone, they convey to the sea large cargoes of merchandise, gathered from the products of the field, the forest and the mine. Hills of iron, mountains and valleys filled with coal, are found on its banks." Has not the substantial truth of this poetry been demonstrated before your eyes? So also he said: "The course of a river exercises important bearings upon commerce. A river that runs east and west has no diversity of climate; its basin is between two parallels of latitude, and

there is no variety of production from source to mouth, except such as is due to elevation. * * * On the contrary, one who descends a river that runs north and south finds his climate changing day by day. At every turn new plants and strange animals meet his eye. He brings with him from its head-waters the furs, the cereal grains, and a variety of articles (products of the north) to exchange for coffee and sugar and the sweets of the South which are gathered on its banks below. Therefore, it was that he declared that "There is no sea in the world which is possessed of so much importance as this southern sea of ours; that, with its succession of harvests from one or other of its river basins, there is a crop always on the way to market;" that it has for back country a continent at the north and another at the south and a world both to the east and the west. He predicted that the Gulf would out of its relation to Panama secure a marvelous future; that by the construction of an Isthmian ship canal the American people would "Give vent to commerce, scope to energy and range to enterprise," and that by means of it "old channels of trade will be broken up and new ones opened." If we make the utmost allowance for the splendor of word-painting in which your famous scientist, patriot and hero was a master, there was and is, perfectly sober and statistical justification for the eloquence in which, he stated his serious conclusions. He believed them to be true; we know them to be true.

You will, I hope, indulge me if, before I close, I return to the economic future of this South Land of our Republic. It is, believe me, the most important and determining element in the promise of the canal. I venture first, however, to submit some rules of public policy which it seems to me that the American Government might well adopt in the administration of the great work it is now undertaking. No body of American citizens is likely better to estimate the worth of

the suggestions than those to whom, like yourselves, the creation of American sentiment in behalf of the Isthmian canal has been especially due. Nor, if they be sound, can any citizens be more influential than yourselves in securing their adoption.

AMERICAN SUPREMACY.

I do not, in what I say, distinguish between the Nicaragua and the Panama routes. One cannot but be impressed with the thorough and patriotic earnestness with which Senator Morgan has expressed a preference for the former. Into that discussion, however, I do not feel competent to enter. So long as American supremacy over the canal is maintained—it is doubtless not unnatural to prefer that the many millions of money already spent at Panama and the large section of work already done there should be made useful, and that some years of delay should be saved. Nor, is the American people likely to wish to be harsh or unjust in dealing with the French investors. They were not indeed loyal to the United States in their investment; but they were Frenchmen and not bound to be. That can be no ground of offense to us. I hope and believe that President Roosevelt will treat them scrupulously, and that the final glory of our achievement will not be dimmed by any aspect of unfair parsimony. So, doubtless, the administration will be reasonably indulgent with the Colombian Republic; but such indulgence should be no more than reasonable. If the world or the United States were shut up to the Panama route, neither one nor the other could in loyalty to civilization permit to that republic a dog-in-the-manger policy. But we are not shut up to that route. Even if the treaty be not ratified, we need not consider whether the Panama route could be rightly acquired by

other means. For the alternative Nicaragua route has, it is demonstrated, many advantages. Public sentiment will, I believe, support the President in compelling the Colombian government to promptly yield or suffer the calamity of a loss of the canal to their Nicaraguan neighbor at the North. There can, however, be hardly a doubt that before the winter frosts are here these difficulties will be out of the way and American work at Panama begun.

The prime duty of our government will then be to speed the work to the very uttermost which is consistent with doing the work well and without wanton or corrupt waste of money. The work gives opportunity for executive ability of the very highest order; and such ability, it is to be presumed the President will secure. Wise and thorough provision of the best plant; timely foresight to prevent the waste so common in building enterprises because of delays for necessary implements or supplies; the supply of the very best sanitary protection to those engaged upon the work in so unwholesome a climate and region; the distribution of the engineering and laboring forces in relays so that the men not natives of the tropics who are engaged in the work shall not be kept at it beyond their full vigor—all these surely will not be overlooked. I should be very sorry indeed to suggest any failure in economy. But, wherever the engineering work can be speeded at a larger but not not unreasonable cost, I think the economy will consist in saving time rather than in saving money. It is difficult to measure in dollars the value of the gain of two years or three or four in beginning the operation of a great civilizing and peaceful force. The utmost cost of the canal will not exceed four times the recent increase in the annual cost of our navy owing to our strenuous ambition that American iron-clads may be frequently seen in foreign ports. The total cost of the canal will be, perhaps, one-third the cost of subduing the Filipinos, or, perhaps, three or four times the

annual cost of holding them in subjection now that they are subdued. But the merely material benefit of the canal, to say nothing of moral and political considerations, will be vastly greater than any we shall secure from our new fleets and steel cruisers or from the bloody enforcement of American sovereignty in the Philippines.

NOT FOR PUBLIC REVENUE.

Indeed, we shall do wisely not to treat the canal as an investment to bring direct income to our treasury. The accounts of the American postoffice include no interest charges on governmental investments in postoffice buildings. We keep no ledger account of investment in the Mississippi jetties or the channel and harbor work at New York, or Boston, or Mobile, or Galveston. Seventy-five years ago and more the State of New York expended \$9,000,000, a vast amount for those days, in the Erie canal—a waterway 363 miles long, which rises and falls by locks nearly 700 feet, in order to bring the commerce of the Great Lakes to the Hudson river and thence to the port of New York. Upon that canal was in large part built the commercial supremacy of that metropolis. Since then several times the original cost has been expended upon it; and today the people of the State seriously propose to make of it a ship canal, and for that purpose to expend an amount perhaps as great as the Isthmian canal is to cost the United States. Serious as was the investment for New York, and acceptable as a direct income from it would have been, the State found it wise many years ago to make the canal free. Today the State contributes even the cost of maintenance. So in my own city of New York we expended \$16,000,000 upon a bridge across East River from which it was at first intended to earn maintenance and interest charges; but it was finally thought best to make it free to foot passen-

gers and to charge for vehicles a rate which barely suffices for maintenance. Indeed, it may be said in general that, whether it be a high road or a bridge or a waterway, every establishment of easy communication diffuses its benefit over the whole community, and may with great force be treated as a general public charge. The same tendency is illustrated in the great improvement of free roads in our country and the abolition of toll roads.

In the numberless monographs and arguments addressed to Congress or public sentiment in behalf of the canal construction, many demonstrations were attempted of the direct profit of the canal, that is to say, of its ability to earn maintenance and interest charges. I am far from being impressed with the demonstrations. That the traffic will be in itself large, and that it will steadily tend to increase, I have no doubt. But that we can safely impose tolls such as are collected at Suez, or that we can earn from the investment the rate of interest which the British Government collects upon its majority shares in that enterprise, I do not believe. Certainly we shall not do so for many years to come. In my opinion, the attempt to do it would involve defeat of a large part of the real purpose and justification of our national expenditure for the canal. It is wise, no doubt, that we should collect from ships using the canal the cost of maintenance. Perhaps we should collect more. But our expenditure in construction ought to be in general treated as we treat the cost of clearing a channel to one of our great ports. The best policy of modern times is to make highways free. Thus are they made most profitable. Nature had almost cut this canal for us. It is for us to complete her work. Then let the trade of the world, the old lines and the new lines of its commerce, unhampered by obstructive charges, develop and change according to Nature's own laws as the skill and unending experiments of merchants shall discover them. So long, we

may be sure that, directly or indirectly, the saving in the cost of transportation in the establishment of new markets and in the sources of supply will be diffused over the United States, and its profits from the investment best and most largely secured. I am, however, frank to say that I should be sorry to see any discrimination made in this respect between foreign vessels and American vessels. My wish that the tolls shall only suffice for maintenance is no special benevolence of mine to American ship owners. So far as they are concerned, they should pay for whatever benefits they get. Nor do I approve of making to them any subsidy directly or indirectly. But the laws of competition will soon enough distribute, and equably, as I have suggested, the real benefit of a new and free trade between the oceans. If the foreigners reap some of this benefit, they cannot, if they will, avoid sharing it with us. A policy dictated by national dignity and generosity is also, I believe, here dictated by the soundest maxims of political economy.

So would I have our government, as the owner of this beneficent work, dedicate it strictly to the equal uses of all nations of men and to the service of every peaceful industry. If the United States had no other motive for the construction of the canal than that in time of war it might be of naval or military service to us, the cost of the construction would, I believe, be a wise investment. Since we are a power on the Pacific as well as on the Atlantic, we need, in war, if war come—as God grant it may not—the shortest possible waterway between them. That advantage the canal will give us. But because we have it we ought never to give to this peaceful achievement the aspect or invitation of war. If we protect, as we must protect, the canal—and by force if necessary—we shall protect it as a great safeguard to international fellowship.

AFFECTS ALABAMA.

And now may I return to the special promise which the canal brings to the States of our Union on the Mexican Gulf? Will you permit me also some deferential words upon our immediate concern which the citizens of Alabama must have with the Canal as it affects their own economic future and well being? To an experienced traveller familiar with the material conditions and outward physical phenomena of other highly civilized parts of the world, the most striking impression the open windows of railroad cars bring him as he rides through Alabama or the States on either side is not so much of what you and the three generations before you have already done—great as that is, as it is of the future of well-nigh illimitable industrial opportunity. When from Sussex or Kent or Devon in the south of England, or from Normandy or Brittany on the French side of the channel, with their fields and villiages mellowed by a thousand years and more of cultivation and settlement, an intelligent European comes to the country about Boston or New York, he is likely to be impressed with a certain newness or relative absence of finish or detail. Much has been done; but there is the material for doing much more. So it is that he is also struck with the aspect of rapid and powerful growth and the promise of future wealth and empire. A like thing is true when a traveller from the older towns of New England or Pennsylvania rides through your State or Mississippi or Louisiana or Georgia. However great his respect for what the past has here achieved, it is the inevitable and shining future which chiefly captures his attention. In your own State, for instance, the land vastly surpasses in prolific possibilities the scanty soil and reluctant fields of my Northeastern country; and, besides, you have a wealth in iron and coal upon which may be built a colossal prosperity in manufacture. Here are rivers lead-

ing to the Ohio and the North, here are great waterways leading to the Gulf. You have easy access to the entire Mississippi valley and to the ocean. Your climate, though the summer be long, is like that in which men did the work of Greece and Rome or the Italian Renaissance. With all this your population as yet averaged but 35.5 to the square mile. No doubt your rate ought not to be compared with the rate of 590 in Belgium or 586 in England or 407 in Rhode Island; for they consist of groups of cities with nearby tributary districts. But if we compare the density of your population with that of old and highly developed agricultural regions in Europe having far less natural advantages than yours, it is plain that the great result already attained here has thus far involved hardly more than scratching the soil in comparison with the result you will accomplish hereafter. The time will come when instead of 35.5 to the square mile, you will, like Italy, (after excluding some of its great cities) have six or eight times that population and the population will on the average be maintained better far than the Italians, and better even than your present population. A like thing is true of the United States generally. It is true, for instance, of large tracts of almost wild land within my own State of New York not half as fertile or as promising as the wild land in Alabama, but still susceptible of a far more productive use than that to which they are now put. You may find within fifty miles of the New York City Hall, land covered with weeds and despised even by sheep and goats.

PROMISE FOR THE SOUTH.

It is said, and probably with truth, that the population of the United States is in time, and no long time measured in national lifetime, to be upwards of six hundred millions. Of this increase Alabama and the Gulf States will have

their full share And increase in industrial power and prosperity will, I believe, attend closely the increase in population, Malthus to the contrary notwithstanding. Just as regions of England which were fens and morasses in the days of James II., now support some of the most finished agriculture and profitable manufactures, so beyond doubt lands which you now count valueless, will, in time, be veritable treasure-trove. Lands which to-day you will find worth but a rude cultivation will,—and within the lifetime of some, perhaps many, of those here to-day,—be of very great value. During the civil war and the days of reconstruction, the market or apparent value of the Alabama farm lands sank enormously. But from 1870 such value, according to the census, has steadily increased. In 1870, upon a gold basis, it was \$54,000,000 ; in 1880, \$78,000,000 ; in 1890, \$111,000,000 ; and in 1900, \$134,000,000. So it is that the value of farm produce has increased from \$51,000,000 reckoned at gold prices in 1870, to \$56,000,000 in 1880, to \$66,000,000 in 1890, and \$91,000,000 in 1900. The manufactured products which, before the civil war, were but local and relatively slight, had in 1890 become \$51,000,000, and during the decade ending in 1900 had increased 60 per cent. to \$80,000,000. And, as we all know, this product is to-day increasing more rapidly than ever before. Your mineral product before the civil war was unimportant ; to-day you recognize the wealth of a kingdom in your pig iron and coal, those dominant foundations of modern industrial greatness. Your State is surpassed in pig iron by only three States, Pennsylvania, Ohio and Illinois, and in coal by only four, Pennsylvania, Illinois, West Virginia and Ohio.

Very certainly, therefore, Alabama has an industrial development passed far beyond what President Roosevelt might call the "parochial stage." The increase of your production will go on ; and with the increase in agriculture and mining

and manufacture your exports will increase. Nor can they increase unless the imports likewise increase. The important growth in the commerce of Mobile and New Orleans, it is now easy to see, is bound to be still more splendidly important. This, no doubt, would be true if there were to be no interoceanic canal. But for this region holding all this natural wealth in front of the eastern harbor of the canal, the canal brings a special promise of vastly greater commerce. When it opens, Alabama, beyond a doubt, and the Gulf coast of our country will take part in the trade of the Pacific as never before. South Americans living west of the Rocky Mountains will be your customers. Fabrics from your looms and the multifarious products of your mills already established or to be established in the future and to find their raw material in your cotton and vast iron and coal deposits—all these will be introduced to important populations with large capacities of consumption. Both sides of the Pacific will bring you tribute. The problem of more economical agriculture which is being generally forced upon the United States as it grows older and richer, is being specially forced upon you. Your increase in population, your more numerous and populous cities and towns, will compel more and more varied crops, larger and larger garden areas, more orchards and small fruits, more and more thorough tillage. This is illustrated by the reduction in the average area of the Alabama farm which in 1860 was 346 acres, but in 1880 was reduced to 125 acres, and in 1900 to 93 acres. This smaller unit of cultivation no doubt means here greater thoroughness of tillage, just as it does in France and Belgium. The reduction in the acreage of the single farm means greater and greater production per acre. Your manufacturers have made a splendid beginning; but, in comparison with the future, it is but a beginning. From the more elementary uses of your metalliferous deposits and the simpler manufactures of your

textile products you will, beyond a doubt, proceed to the more complex and richer forms of finished product.

Alabama and her Gulf sisters are clearly ready, therefore, to begin profitable trade relations with customers on the Pacific. They face the Atlantic gate of the canal; they are far nearer to it than any other country having available material resources and a population of industrial ability comparable with theirs. Nevertheless, your commercial and productive power must, like the same power in all other highly civilized regions, depend on man no less than on nature. Therefore it is that I refer to the industrial ability of your population. Your merchants and bankers and railroad men not only hold the highest rank here; but when they come into our Northern competitions they more than hold their own. We are a bit jealous in New York whenever a Southern man opens there an office. There will be no lack of wisdom, executive force and administrative ability in the promotion of the great interests of yours which the canal must make so much greater. Nor will the labor of the masses of our own race be deficient in skill or energy. Of that the demonstration is overwhelming. There arises, however, a question as to negro labor with which your public sentiment has begun to deal, and with wise foresight. It has an important relation to this new industrial promise of the Gulf States; and although you understand the problem as I cannot, you will, perhaps, indulge me in some sympathetic comment. And, besides, we are not without like problems at the North, even if no one of them be as important as this one of yours.

FUTURE OF THE NEGRO.

In industrial progress, whether here or elsewhere, a prime factor must be the ability and character of the masses of the laboring men. I am told by intelligent and distin-

guished Southerners, and it is easy to see, that, since manual labor is in large part done by negroes in the Gulf States, their future industrial development seriously depends upon the industrial future of the negro. The subject is difficult; and it is made more so by racial questions which belong to politics or sociology and with which I shall not deal. It is only by way of parenthesis that I declare my long-time confidence that such problems will be solved wisely by the common sense, the moderation, the humanity and the far sightedness of the white people of the South. Every rational American, North and South, perceives that with them the solution rests and must rest. I am concerned, today, however, with a different though allied subject—the effect of negro labor in the Gulf States upon the share of those States in the benefits of the Isthmian Canal. If your share be dominant, as I believe it will be—as, surely it ought to be—it will result from your development of more minute and thorough agriculture and mining and a greater volume, complexity and nicety in your manufactures. Like achievements the world over, it has been found, depend largely upon the standard of elementary or crude labor. Our future industrial advance at the North, and yours as well at the South, is, in chief part a resultant of the intellectual and moral condition of the laboring masses, whatever be their color or race. The advance depends upon that, I believe, more than upon the genius of inventors or promoters or business men or lawyers or statesmen. Out of the total population of 1,828,459 in Alabama in 1900, 827,807 belonged to the negro race, or 45.3 per cent. The corresponding per centages of black population were 44.9 in 1890, and 47.5 in 1880.

Nothing, therefore, is more certain than that for generations to come the labor of Alabama must in large part be negro; and that the greatness and solidity of its industrial superstructure must in no slight degree depend upon the character

of that labor. So upon the best solution of the problem of that labor must the full benefit of the new canal to Alabama, and indeed to the whole country, depend in really serious measure. This fact is quite independent of moral or social or political considerations. It is to be dealt with as soberly as the fact that the average temperature is higher in Alabama than in Ohio, or lower than in Southern Texas or Florida. Mulhall in the appendix to the edition of his Dictionary of Statistics published in 1899 (p. 613), points out that one farm hand in the United States raises as much as two in England or three in Germany or five in Austria or seven in Russia. There is, he says, "a prodigious waste of labor in most countries of Europe;" the "number of farmers and farm laborers in Europe is just nine times that of the United States, while the rate of food raised is only double. That is to say, it takes four and one-half Europeans to raise as much food as an American." Hence the agricultural domination of the world by our country; hence the vast recent accumulation of American wealth, the vast progress of its industrial power. It has been demonstrated again and again—and it is, indeed, a refutation of much high protectionist argument—that the most highly paid labor is the cheapest; that is to say, that a dollar paid to a high-class labor will, in the long run, produce more than a dollar paid to low-class labor. Translating all this out of the algebra of statistics, it means that the superior vigor, hopefulness, ambition, buoyant energy of the American laborer when compared with those of his European competitor, are represented by the result of vastly greater productivity. Those qualities affect the laboring man no less than they do the superior mechanic or merchant or bankers or professional man, or, for that matter, the poet. The humblest laborer is worse, that is, less efficient and productive, for being stupid or soddan. I profoundly differ from W. H. Mallock in the

sophistical calculations he makes of the nominal contribution of elementary labor to modern human progress. For he ascribes it solely, or nearly so, to the inventive and organizing genius of industrial leaders; it is that, he argues, and not the improvement of the laborer himself, which has made labor grow more productive since modern times began, and has so created the economic glories of the twentieth century. If so able leaders in business, who have achieved great results with one body of laboring men, you shall, in the same business and with all its advantages precisely the same—if to the very same leaders you give, in place of that body, a different and inferior body of laboring men, the result will be inferior. If labor itself be superior in steadiness, sobriety, self-respect, bouyant and hopeful force, greater results are certain. This necessary leadership is certain to appear. Everyone knows that in neither agriculture nor mining nor manufacture nor commerce nor any part or any of them, is it better that labor should be unwilling or indolent or vicious or demoralized or without the self-respect and hope arising out of a general and spontaneous confidence in the fairness and justice of government and the dominant social forces. Nor can anyone familiar with the industrial development of my own part of the country or of Europe doubt for a moment that productivity of a given body of labor may, by due regard to this consideration, be increased, and increased enormously. The ruling Caucasian will take care—no doubt in the interest of civilization he must take care—to remain dominant. But in order that he shall fully work out the career of industrial empire that belongs to him here, he will, beyond a peradventure, be seriously concerned for the improvement in industrial intelligence and in the economies and habits of the work for which he must depend upon the negro laborer. Ignorance is never and nowhere useful to industrial progress; it is always obstructed by incompetence on

any round of the ladder, whether at the bottom or the top. The more efficient and the less wasteful the laborer, the more productive must he be for himself and for white men. The higher his industrial intelligence, the less his control by superstitions, the less his vices, the more orderly and disciplined his conduct of life, no doubt far the better for him; but also far the better for the dominant civilization and the prosperity of the white man. I listen with impatience and sometimes intolerance to the failure of some worthy men at the North to realize the difficulty of this problem. Its solution must, as I have said, rest with the Southern men alone, free of the ignorant meddling of others. It is not possible for a sensible and fair observer from a distance to do otherwise than pay a debt of honor to the sympathetic widening and deepening of Southern sentiment about the matter. With your economic wisdom and your humanitarian and statesmanlike instinct, I believe the solution of this tremendous problem is safe, though inevitably it must be slow. Speculation upon the future status of the black race may well be laid aside while the inspired labors of your educators and publicists encourage the millions of negro laborers to make their work steadily better, themselves steadily more intelligent in industry, and their lives steadily more self-restrained and self-respecting. With their greater and greater productivity will go a still greater growth in the productivity of the higher labors of the white man. So will come a larger and more potent leverage to the white man. So will be effected the beneficent adjustment of labor conditions to the industrial necessities which the splendid promise of the canal must lay upon this Gulf country.

AN ALL VITAL WISH.

And now, in ending, shall we not indulge another and all-vital wish for this new agency of American industry? Let

us not grow jealous of the larger and freer commerce which the canal is to bring. Shall we not, rather, before the first steamer mounts its mighty stair-way of locks, strive, in part at least, to reverse the one amazing inconsistency of our economic and political history? While we have struggled with wholesome and imperative ambition to make the incoming to our harbors of the argosies of peaceful commerce, have we not often forbidden them when at the docks to land their goods as they wished to do, that, so doing, they might take away ours? While at mighty expense we have opened the mouths of the Mississippi to the safe passage of the ships of the world,—while we have invested vast sums in improvements of rivers and harbors of the Atlantic, Gulf and Pacific coasts—while the American people have not shrunk from the construction of great waterways like the Erie and Sault Ste Marie Canals, nevertheless have we not cunningly forbidden them a great part of their intended uses? The American people during the past forty years has no sooner made an appropriation to open wider and better a portal of commerce, than it has passed some other law to hang in that portal a door of inhospitality difficult to open, if, indeed, we have not ordained that it should be tightly shut. The future will bring welcome contradiction of the past if the opening of the canal shall not inspire some narrow, although patriotic, Americans to seek to exclude the very traffic for which we shall build it. Shall we not, rather, welcome every purchaser from a Pacific coast or island coming to buy what you in the Gulf States or we at the North and West shall produce? Shall we not welcome him,—and to both our profit and his, —when we tender him the goods which we can produce cheaper and better than he, and let him pay us in the goods which he can produce cheaper and better than we? Between this Gulf coast of yours and the Canadian border extends the greatest area of untrammelled trade which the world has

ever known. Here are nearly fifty wealthy and powerful States, a dozen of them important kingdoms in themselves. Here in the United States is an internal commerce vastly surpassing the entire free trade of England over all oceans and seas. Borne upon the sustaining impetus of this industrial freedom within our borders has come the noblest development of wealth and industry and commercial manufacturing and financial power the world has ever known. And why? Is it not because the American domain between the two great oceans and between the gulf and the great lakes includes the varieties of climate and soil and industry fit for unlimited interchange; and because the interchange is unobstructed? Have we not in this imperial domain of ours forbidden the hostilities or disparagements of custom frontiers to check the course ordained by the Almighty? Will not you of the Gulf make ready, therefore, to welcome, not to forbid, that commerce of the Isthmian Canal which in such large part is destined for you?

In the building of the Isthmian Canal the American Republic will humbly but gloriously promote the brotherly neighborhood between the nations and tribes of men which the Almighty has intended. May we not let one statute of narrow and unprofitable jealousy reduce the measure of this benefaction or deprive us of even the least part of that benediction of peace on earth and good will to men in which lies the noblest promise of the Isthmian Canal.

THE BRITISH CONSTITUTION,

BY

WILLIAM L. MARTIN.

The British Constitution is not a single written instrument framed at a given time. It is a thing of growth, having its roots far back in the ages of the past; the product of centuries of labor by a liberty-loving race; the result of many conflicts between the people and the crown; the triumph of Democracy over absolutism in the English nation. It consists of certain political institutions, written and unwritten, which are recognized as furnishing the basic principles of the British government; and it illustrates most strongly the great capacity of the Anglo-Saxon to overcome all obstacles in his progress to self-government.

Writers upon the subject of British constitutional history tell us that the Angles, Saxons, and Jutes who conquered Britain in the fifth century and exterminated or enslaved the greater part of the native inhabitants, brought with them and replanted in their new home certain principles of self-government which were and have remained common to the whole of the Teutonic race. That scholarly Alabamian, Hannis Taylor, in his able work upon the Origin and Growth of the English Constitution, says the conclusion is irresistible that the early Teutonic settlements in Britain—the mark, the hundred and the shire—were a substantial reproduction of the earlier state of things described in the *Germania* of Tacitus;

that within the limits of Britain, which they made their own, the conquerors of Britain "created a Germany outside of Germany." "The old Teutonic constitution," says Taylor, "was replanted in its purity in the free and unincumbered soil of an island world, where it has been able to work out its historic development in a state of comparative isolation. So deeply were its foundations laid in its island home that it has been able to survive, and to preserve its identity through all the vicissitudes of time and of change through which it has passed. In the political history of the world, the Teutonic constitution which thus materialized on British soil, occupies the foremost place for two reasons. In the first place, it has had the most continuous and unbroken development; in the second place, out of that unbroken development has been evolved the most important political changes with which the world has so far become acquainted—the principle of representative government."

Freeman, in his "Growth of the English Constitution," says there is no doubt that in the earliest Teutonic settlements every freeman had his place and there is no doubt that in the early English settlements every freeman kept his place in the smaller assemblies of the mark, the hundred and the shire. But he does not find, in the early Teutonic system, a prototype of the Great Assembly of all, the Assembly of the wise, the Witenagemot of the whole realm—a body that has played so great a part in the formation of the English Constitution. He says: "No ancient record gives us any clear or formal idea of the constitution of that body."

Blackstone tells us that long before the Norman conquest all matters of importance were debated and settled in the general councils of the realm—a practice, he says, which seems to have been universal among the northern nations, particularly the Germans, and carried by them into the countries of Europe which they overran at the dissolution of the

Roman Empire; that this great council had been held immemorially in England under the several names of *Michel Synoth* or Great Council; *Michel-gemote* or Great Meeting, or more frequently, *Witenagmot* or Meeting of Wise Men; and there are recorded instances of its meetings, says Blackstone, so early as the reign of Ina, King of the West Saxons, Offar, King of the Mercians, and Ethelred, King of Kent, in the several realms of the heptarchy. "Alfred the Great ordained that these councils should be held at least twice a year, or oftener, if need be, 'to treat of the government of God's people, how they should keep themselves from sin, should live in quiet and receive right.' Succeeding Saxon and Danish monarchs held frequent councils of this sort, as appears from their respective codes of laws, the titles whereof usually bespeak them to be enacted either by the King with the advice of the Witenagemot or Wise Men, as 'This is the ordinance that King Edgar, with the council of his wise men ordained,' or to be enacted by them both together. Similar councils were held during the first rulers of the Norman Line."

It was during the reigns of Alfred the Great (871-901) and Edward the Elder (901-925) that the union of the heptarchic kingdoms was effected and local governments established and strengthened. Having succeeded in driving back the Danes and confining them by treaty to certain districts, Alfred divided his Kingdom into counties, the counties into hundreds and the hundreds into tithings, established local tribunals for the administration of justice, appointed capable men to office whenever practicable and, the better to guide his magistrates in administering the law, framed a code of laws, drawn up by himself and approved by his witan, and which served long as a basis of English jurisprudence and is generally regarded as the beginning of the common law and the origin of the jury system. He founded schools and colleges, encouraged learning and industry, promoted the arts

and civil manners, preserved the identity of the English-Saxon tongue and administered his government with so firm and withal so just a hand that everything bore a new face in England. Hume in his beautiful and full tribute to King Alfred says that he saved his country from utter ruin and subversion and laid the foundation of England's future greatness; that his character may, with advantage, be set opposite that of any monarch or citizen which the annals of any age, or any nation, can present to us; and Taylor speaks of him as "one who divides with Washington alone the honor of being the most perfect outcome of the English nation." His works left their impress for good upon the kingdom and were well carried on by his son Edward the Elder, under whose reign the pestiferous Danes were again vanquished and East Angles, Northumberland, Reginald and Sidric were acquired and the Scots and remaining tribes of Britons subjected to his dominion. During the succeeding century and a half and prior to the Norman conquest, Engle, Saxon and Dane were united and the name of Briton passed into Engla-land, the land of Englishmen, and out of these conjunctive terms was coined the name "England." "The growth of real national unity was now complete; the consolidated kingdom of England was made not only in fact but in name." The laws of Alfred and Edward had been brought forward and added to by succeeding monarchs, the first digest of laws applicable to the whole of England having been begun by King Edgar and completed by his grandson, King Edward the Confessor.

The prominent features of the Saxon constitution were the holding of the general assemblies of the principal and wisest men in the nation, the witenagemot; the election of their magistrates by the people; the descent of the crown, when once a royal family was established, upon certain hereditary principles; the paucity of capital punishments for a first offense; the prevalence of certain customs and military ser-

vice, imported by the Saxons, but much less rigorous than those under the feudal system ; estates were liable to forfeiture for treason, but the doctrine of escheats and corruption of blood was unknown ; the descent of land to all males equally, without any right of primogeniture ; county courts for the administration of justice blending ecclesiastical and civil jurisdictions, the proceedings and decision therein being unembarrassed by technical rules ; trial by judicial tribunals, and individual rights of property including absolute ownership in lands. Classed according to modern ideas, the constitution of the consolidated kingdom vested the executive power in the king, the legislative in the king and witan, the judicial in the courts and the witan. Guizot says of them : " Vigorous institutions were they, which feudalism could not overthrow, and which produced, at a later period, representative government in England." We will soon see how their enduring strength was to be tested ; how they were crushed to earth to rise again in later years.

Prior to the Norman conquest the people enjoyed, among other rights, absolute ownership in lands. This fact is strongly evidenced by a curious old grant made by Cuthred, a West Saxon king, in the year 745, confirmatory of certain grants by former kings. It concluded with habendum as follows : " I do, as before said, hereby decree that this grant of former kings shall remain firm and inviolate, *as long as the revolution of the pole shall carry the lands and seas with regular movement round the starry heavens.*" There was nothing feudal about that tenure. Its possessor was the vassal of no one. But when the conqueror came, all was changed. Having slain King Harold and many of the English nobility at the battle of Hastings and defeated the English forces, William, Duke of Normandy, with every outward show of legality, was proclaimed King of England. Claiming to be the heir of King Edward and thus connecting

himself with the rightful line of succession ; procuring his election by the voice of the witan—hardly a free agency in the face of his victorious army—and employing the services of an English prelate (doubtless under fair promises to the church) he complied with every prerequisite to full kingship by ancient customs and the national church. Claiming to be the ruler of a nation in which Englishmen and Normans were alike his subjects, he claimed the possession of every royal right known to former kings, and to this vast sum of power he added the power incident to the feudal system which he established in all its imperious rigor. Hume says : “ He divided all the lands of England, with very few exceptions, besides the royal demesnes, into baronies ; and he conferred these, with the reservation of stated services and payments, on the most considerable of his adventurers. These great barons, who held immediately of the crown, shared out a great part of their lands to other foreigners, who were denominated knights or vassals, and who paid their lord the same duty and submission, in peace and war, which he himself owed to his sovereign. The whole kingdom contained about seven hundred chief tenants, and sixty thousand two hundred and fifteen knights’ fees ; and as none of the native English were admitted into the first rank, the few who retained their landed property were glad to be received into the second, and, under the protection of some powerful Norman, to load themselves and their posterity with this grievous burden, for estates which they had received free from their ancestors. The small mixture of English which entered into this civil or military fabric, (for it partook of both species), was so restrained by subordination under the foreigners, that the Norman dominion now seemed to be fixed on the most durable basis, and to defy all the efforts of its enemies. The better to unite the government, and to bind them into one system, which might serve both for defense against foreigners

and for the support of domestic tranquility, William reduced the ecclesiastical revenues under the same feudal law ; and though he had courted the church on his invasion and accession, he now subjected it to services which the clergy regarded as a grievous slavery, and as totally unbecoming their profession. The bishops and abbots were obliged, when required, to furnish to the king, during war, a number of knights or military tenants, proportioned to the extent of property possessed by each see or abbey ; and they were liable, in case of failure, to the same penalties which were exacted from the laity. The pope and the ecclesiastics exclaimed against this tyranny, as they called it ; but the king's authority was so well established over the army, who held everything from his bounty, that superstition itself, even in that age, when it was the most prevalent, was constrained to bend under his superior force." Primogeniture, or the right of the eldest son to inherit lands of the father to the exclusion of the rest of his children, was established.

It was a fixed maxim of the conqueror that no native of the island should be promoted to any office, civil, ecclesiastical or military. He deposed English prelates and confiscated their estates ; yet he paid tribute to Rome and exalted the papacy.

The manifold instrumentalities employed to subdue the spirit of the English people ; the effort to abolish their language, the cruelties and hardships imposed upon them, and the arbitrary and unusual exercise of power by this monarch would fill volumes. But I must refer to his hunting proclivities. Not satisfied with sixty-eight royal forests in which to gratify his strong taste for hunting, he laid waste the country in Hampshire for an extent of thirty miles, expelled the inhabitants from their houses, seized their property, even demolished churches and convents, driving many thousand miserable peasants and their families from their homes, without com-

compensation, and without shelter, in order to make a new forest. He made laws imposing heavy penalties for hunting in any of his forests, the killing of a deer or boar or hare being punished by putting out the eyes of the offender. His celebrated "Dooms Day Book" secured a list and description of every piece of property in the kingdom, that his enormous revenues might be strengthened. Famines, fivers and fires added to the general misery and desolation; and when, in the 21st year of his reign, (which proved to be the last,) William went over to Rouen, Dickens says: "England was as full of hatred against him, as if every leaf on every tree in all his royal forests had been a curse upon his head. In the New Forest his son Richard (for he had four sons) had been gored to death by a stag; and the people said this so cruelly made forest would yet be fatal to another of the conqueror's race."

But the Norman conquest was not an unmixed evil. The strong administrative policy of the Conqueror had the effect to weld together forever the hitherto imperfectly united kingdoms in one indissoluble whole. The national power was greatly strengthened, the tendency to provincialism checked, the four great earldoms abolished, and the whole realm consolidated into a new kingdom never to be afterwards divided—but to become a giant power of the world.

Among the administrative agencies employed by William was the *curia regia*, a body organized out of the membership of the Great Council and composed of the King's immediate officers and advisors—the great officers of State selected by him. This body was charged with the whole of the central and national administration of justice and finance and finally gave birth to the several courts of law and equity in the king's name, also to the entire administrative machinery of the constitution—and was the progenitor of the present privy council, the real governing power in England.

William Rufus, eldest son and successor to the Conqueror, (1087-1100), who was more tyrannical but less able than his father, was driven by external and internal troubles to appeal to the native English for support against his Norman kin; for which assistance he made fair promises of good government, not to be carried out to any considerable extent. It must be said to his credit that, in an age of greatest superstition, when most men thought the crusades the only road to heaven, William Rufus kept his head, and actually quarreled with the ecclesiastics and refused to submit to the domination of Rome. His death while hunting in the wicked New Forest was doubtless gratifying to the people as proving the truth of their prediction as well as for other reasons. His next younger brother, Robert, having tarried too long in Italy on his return from the crusades (espousing the hand of Sibylla, the daughter of Count Conversano) the youngest brother, Henry, seized the opportunity and, making fair promises which were reduced to writing, secured his election by the Witan to the throne of England. He promised to restore "those good laws of King Edward," and many other things; and while he observed the general rule of kings to break promises, the vigorous policy of the Norman rulers was adhered to and carried out during his long reign of thirty-five years. History reverses itself, in that the King of England now conquers Normandy. Henry re-established the civil and ecclesiastical courts as in the Saxon times, quarreled with Rome and compelled the Pope to consult the King before sending any legate into his dominions. Great concessions were made to the people by the successor, Stephen of Blois in his coronation oath; which oath he failed to remember. His reign was marked by discords, riots, revolts and anarchy; and the country was well prepared for the patriotic labors of his successor, Henry II, whose reign of thirty-five years did so much for the lasting good of his people. He confirmed the charter of Henry I and carried it out in good faith; defeated the contentions of the church for criminal as well as

ecclesiastical jurisdiction over its members and, by the Clarendon Conventions, killed the power of the church over the State and made its members answerable in the civil courts for their conduct the same as other people. With the sanction of the Great Council he divided the kingdom into six parts, appointed eighteen judges, among them the great Glanville, afterwards chief justicia, and a jurist of renown whose writings upon the subject of English law at that day rank high as authority. Henry II deserves to be gratefully remembered, not only by Englishmen, but by the friends of justice and liberty the world over. His reign was so productive of good order and contentment that the absence of his rebellious son and successor, Richard, had no bad effect; and matters went quietly along until King John came upon the scene.

There is no period of greater importance in the Constitutional history of England than the 17 years reign King John; when the barons and the people behind them, outraged beyond further endurance by his tyrannical exactions and oppressive wickedness, resolved to stand it no longer and, in effect, staking "their lives, their fortunes and their sacred honor" upon the result of the issue, took up arms against their king in order to compel him to stay the hand of oppression, to stop his rebellion against the laws of the kingdom and to perform his duty as the ruler of the nation. John plunged into wars with France, Wales and Scotland, imposed ruinous taxes, confiscated the property of the clergy, murdered his nephew Arthur, quarreled with the Pope and then submitted to Rome only to break faith and again submit, and when it became evident that the galling yoke would no longer be borne by the people, he treasonably sought the aid of the Pope and foreign soldiers to subdue them; but the barons were alert and in dead earnest and his treasonable purposes were thwarted by their quick action at the proper time. On the 15th day of July, 1215, they demanded concessions as set

forth in the Great Charter. The conference was held in an island in the Thames near a place called Runnymede. When the document was first read over to him, John swore "by God's teeth" that he would never agree to such demands, and asked why it was that they had not demanded his throne; but after four days' consideration, and seeing no escape, he was persuaded to do so, and then and there the Great Charter took its place in history.

The document contained little that was actually new; but it affirmed in unmistakable terms the existence of certain fundamental principles of government for the protection of the life, liberty and property of the citizen, principles which have found expression in all the American constitutions. All distinction of classes was obliterated except as between the freeman and the villain, and even the villain had his rights. Abuses were to stop, the rights of the church were to be respected, no one was to be deprived of his life, liberty or property without due process of law, and generally the laws of Edward and Henry were confirmed. Certain great men, prelates, earls, and barons were to be summoned in person by the king; the rest of the chief tenants to be summoned in a body, and the purse strings were to be held by the national council, without whose authority taxes were not to be imposed.

To insure compliance on the part of the king, 24 barons were appointed, one-half by the king, the other half by the council, who, together with the Mayor of London, were charged with the duty of seeing to it that the King observed the charter; and they were empowered to call the whole commons of England to assist them, if necessary by force. The wisdom of this provision was manifest when, at a later day, under the sanction and support of the Pope, John rebelled against the charter, hostilities broke out afresh and the barons in their despair invited Louis the Dauphin, son of

Phillip, King of France, to come to their aid and take the kingdom, but just then the Great Reaper opportunely harvested John, the barons flew to the support of young Henry III, Louis retired to France, and by a narrow margin the Constitution of England still lived.

Henry III was but nine years of age when he succeeded his father, the unlamented John. During his reign of fifty-six years (1216-1272) the Great Charter was several times confirmed, with certain omissions and additions, the most important addition being a relaxation of the cruel forest laws. Henry, with the sanction of the Pope, violated the charter, hostilities ensued, he was placed in captivity and Earl Simon of Leicester usurped the government and summoned a parliament, including in his call, besides the barons and certain ecclesiastics, two knights from each shire and two deputies from the boroughs, "an order of man," says Hume; "which had always been regarded as too mean to enjoy a place in the national councils." But the experiment was not repeated until thirty years later, 1295, which is the real epoch of the house of commons, when Edward I called a parliament and, in addition to the lords spiritual and temporal, included in his call two knights from each shire and two deputies from each borough, to be clothed with sufficient authority from their communities to consent in their names to what the king and his council should require of them. After their election these deputies were required to give security for their attendance; their charges were borne by the boroughs which sent them and they had so little idea of appearing as legislators that the duty was regarded as irksome and undesirable. They sat in the same chamber as the lords but apart from the titled members "who disdained to mix with such mean personages;" and after they had given their consent to the supplies wanted they understood their part of the business was finished and they withdrew, the parliament going on with other business. But it

was not long until they began to annex as conditions to their grant of subsidies, provisions correcting abuses and restricting the royal power; and in the reign of Edward III, and in the year 1344, the formal separation of parliament into two houses took place, the knights from the shires and deputies from the boroughs making up the house of commons—the third estate of the realm. During this reign they impeached the king's ministers and, by remonstrance, required the king to reform his household. Peter de la Mare, the leader in these bold and unprecedented movements, was punished with imprisonment by the king; but some years later this bold leader was rewarded by being selected as the first Speaker of that body. But the house of commons was far from enjoying the authority of a co-ordinate branch of the law making power; not until the reign of Henry VI did the commons begin to legislate by formal bill introduced in that body, or consider bills passed by the other house, the practice being to attach to their grant of subsidies a petition to the crown for such measures as they desired, which petition, if the king saw fit to grant it, furnished the basis for laws to be drawn up by the judges.

Thus it appears that during the reign of Henry VI, in the 14th century, the parliament assumed its present outward form. The house of lords, historians tell us, being the literal successor of the Witan, while the house of commons is the outcome of the popular representation idea asserted by the shires and towns in Saxon times, but the connection as to the commons seems more fanciful than real. Nevertheless the form was an admirable one and has furnished the pattern for representative governments throughout Christendom. Its authority however was yet to be established; its rights, powers and privileges to be fought for and won. During a long and weary period of time it was without potency, in fact, as an independent power, it had no real existence from the time of

Edward IV, in 1461 to the time of James I, in 1603,—about a century and a half. It was pitifully subservient to the despotic will of the crown. Magna Charter was as little observed as if it had never existed. The divine right of kings supplanted all other rights during the reigns of Edward IV and V, Richard III, Henry VII and VIII, Edward VI and Mary and Elizabeth. Not until the reign of "our cousin of Scotland" to whom Elizabeth bequeathed the crown (James I) did the commons have the temerity to assert any right or privilege of their own; then they made a feeble remonstrance against the action of the chancellor in declaring certain seats in their body vacant and ordering new elections, the commons declaring that such action was "a perilous precedent." During all the internal and external strife which prevailed during these times, including the "Wars of the Roses," in which "the brother blindly shed the brother's blood," the parliament was but the echo of the prevailing regal authority, responding, in turn, to the voice of the dominant party for the time being and sustaining all the brutalities visited upon the vanquished. Loyalty to existing regal authority during the reign of one monarch was made the basis of attainder and death when the changing fortunes of war shifted the crown. The Yorkists murdered the Lancastrians and the Lancastrians butchered the Yorkists and the party in the ascendant was always in the right. When Richard III paved his way to the throne with the skeletons of his own blood that had stood in the way of his ambition, the winter of discontent was made glorious summer by this sun of York. When Richard died at the hands of the Earl of Richmond on Bosworth field, the acclamation went up of "Long Live King Henry the VII." When Henry VIII loved the Pope all worshipped at the Papal shrine. When his tender conscience, after twenty years, revolted against his marriage with the good and true Katherine, and he had to break

with the Pope in order to get a divorce and marry Anne Bolyn, the parliament lent its support; and when Henry's necessities drove him to establish a "new religion," the faith of the parliament underwent a like change; when he wanted all the heretics burned, the parliament lighted the torch; and when he became tired of a wife and wanted a new one, the peers stood ready to condemn the unfortunate, that is, the immediately unfortunate "to be burned or beheaded at the king's pleasure." The murders of Richard III, the slaughters of Henry VII, the cruel butcheries of Henry VIII, the fiendish barbarities of Mary, the imperious tyranny of Elizabeth, together with the courts of star chamber and high commission and the court-martial, would seem to have been sufficient to destroy every trace of civil liberty and erect upon its ruins a most absolute and despotic kingship; but the Anglo-Saxon love of liberty had not wholly perished; the spark remained, and the violence of the past furnished fuel to rekindle it in the future.

Some conflicts between Elizabeth and the Commons toward the end of her reign indicated a revival of the independence of parliament; and during the reign of James I that body took on new life and vigor and assumed the role of the real friends and representatives of the people against the abuses of prerogative. But it was during the reign of Charles I (1626-1638) that the battle for the life and existence of the House of Commons was fought and won and Tudor absolutism forever abolished. When the Commons refused to grant the money he wanted Charles instantly dissolved the parliament and proceeded to levy certain duties in direct violation of the Great Charter and in total disregard of the highest rights of the English people and was sustained by crown lawyers and judges upon the convenient doctrine that the king could do no wrong however hard he might try. A fatal division between the king and the people followed. Another parlia-

ment was summoned and was composed in the main of men of determined opposition to the king. This parliament laid before Charles one of the great documents of history, the Petition of Right, requiring that the free men of England should no longer be called upon to lend the king money, nor imprisoned for refusing to do so, and should no longer be seized by the king's special mandate—practices which had become all too frequent—such being contrary to the laws of the country as well as destructive of the liberties of the people. The king was constrained by the necessities of the situation to give his consent to this petition, but he failed to keep his word. In 1629 he undertook to dominate the parliament according to his own will, claiming to be an absolute king. The word "vipers" was applied by him to members of the house who had the courage to oppose him, and finally he had some of the members dragged out of the house and placed in the tower. This was too much for the commons, and that body voted that it was treason in the king to make war upon his parliament and his people, and an ordinance was sent up to the house of lords for his trial upon that charge; but the lords, then only 16 in number, sided with the king and rejected it. Thereupon the commons rose to the height of making an ordinance of their own, that they were the supreme governing body of England and would bring the king to trial; they provided a special tribunal of 125 persons to be chosen from the house, from the officers of the army, and from among the lawyers and citizens. John Bradshaw, serjeant-at-law, was appointed president and the trial was had in six days in Westminster hall, resulting in sentence of death—and the head of Charles I fell from the block and the commons were masters of the situation.

The necessities of the occasion were great; on the result of the conflict depended the future liberties of Englishmen. It was a triumph of the doctrine of a rule of law against the

absolutism of kingship, of liberty over despotism—although the fruits may not have been reaped in their fulness until later generations. The parliamentary war lasted four years.

The house of commons after the execution of Charles felt itself to be of such transcendent strength and importance that it declined to take notice of measures sent down by the house of lords, and actually voted to have nothing more to do with the peers, that that house was dangerous and useless and was therefore to be abolished; and they ordered a great seal to be engraved on which the commons was represented. with the legend, "On the first year of freedom, by God's blessing restored, 1648." The form of all public business was changed to that of the keepers of the liberties of England, and it was declared high treason to claim or acknowledge Charles Stuart, the prince of Wales.

It would seem that the way was open to the establishment of a republic; but after eleven years of the commonwealth under the protectorate of Cromwell, it was found that the English had not given up their idea of a king; and the Stuarts were recalled, Charles II and James II being on the throne until the revolution of 1688. James having run away, the crown was fixed upon William and Mary of Orange and the princess of Denmark and her posterity. In this movement the house of commons boldly led and compelled the lords to acquiesce in the settlement. It forms a most important epoch in the constitution by the great precedent of deposing one dynasty and establishing another and giving expression to popular principles which put the nature of the constitution beyond dispute. The declaration of right which summed up the law of the constitution was heartily assented to by William; and afterwards enacted into law as the Bill of Rights. But the capstone of the constitution was the Act of Settlement fixing the succession to the crown on the prin-

cess Sophia of the House of Hanover. Of course the feudal system, the star chamber and all such forms of tyranny were long ago abolished. And while a national church is recognized, membership therein is not a necessary qualification for civil office; and other forms of religion are tolerated.

Thus we find that at the end of the revolution of 1688 the written constitution reached its full growth and consisted of the great charter, the contents of which have been referred to; the Declaration of Right, which was a summing up of the law of the constitution; the Bill of Rights, by which papists were excluded from the crown, and the two acts of settlement, by which the succession to the crown was regulated by positive law, which instruments, taken together, "define the prerogatives of the crown, the privileges of parliament, and the rights of the subject, with about as much precision as an American constitution now defines the rights and duties of the governors and governed." Down to that period there was no distinction between the constitution and the law. Since that time a code of political maxims has grown up in practice and taken its place as the unwritten part of the constitution and is in every sense as sacred and binding as the written part. By that unwritten constitution the whole administration of the government is directed and controlled by the house of commons composed of members elected by the people. This results from the settled understanding that the crown can neither appoint ministers of whom the house of commons does not approve, nor dismiss ministers of whom it does not approve. That house, itself an elective body (for a term of seven years unless sooner dissolved) chooses its own leader at the opening of each parliament. Instantly the crown must call upon that leader to form a cabinet. The cabinet thus formed, under the lead of the prime minister, directs and controls the exercise of all executive and legislative business of general importance. The ministry becomes

the connecting link between the king and the parliament and shapes the action of both. It is the instrument of harmony between the two, but accountable to the house of commons alone. So long as Mr. Gladstone's government or that of Lord Beaconsfield pleased the house of commons it remained in power; but any action of that body going to express a want of confidence in the ministry, such as a failure to sustain its position upon any public question, is a demand for its immediate resignation; and the ministry goes out, unless it dissolves the parliament and appeals to the country.

The house of lords being composed in the main of peers created by the crown, the ministry, acting for the crown, may increase the number without limit and in this way change the views of the upper house to conform to those of the ministry and of the commons behind them, the very existence of which power is generally sufficient to overcome a necessity for its exercise. The veto power once exercised by the crown went out of use when the present form of ministerial government became fixed, some two centuries ago. It would be most absurd for the ministry, through the king, to kill a measure which the ministry had enacted through the parliament. No monarch would dare assume the exercise of such power under the present constitution. The fate of Charles I, if nothing else, would dissuade him. Bagehot, who wrote in the time of Queen Victoria, says it is a fiction of the past to ascribe to the queen legislative power. "She must sign her own death-warrant if the two houses should unanimously send it down to her." Yet the ancient form of servility is retained in the enacting clause of statutes, thus: "Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:" But the preamble to an act called "Finance Act, 1902." is still more

agonizing, viz: "Most Gracious Sovereign; we, your majesty's most dutiful and loyal subjects the commons of the United Kingdom of Great Britain and Ireland in parliament assembled, toward raising the necessary supplies to defray your majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto your majesty the several duties herein-after mentioned; and do therefore most humbly beseech your majesty that it may be enacted," etc. When it is remembered that his majesty had no choice but compliance with the request of his "humble subjects," the phrase means nothing more than politeness in official circles and attachment to ancient forms.

REPORT OF COMMITTEE

— ON —

LEGAL EDUCATION AND ADMISSION TO THE BAR.

To the Alabama State Bar Association :

Your committee on Legal Education and Admission to the Bar respectfully report that it is cause for sincere and general gratification, that, at no period of the history of our country, and State, has the subject of Legal Education awakened such widespread interest and attention as within recent years, and it is further cause for satisfaction that this wholesome result is the outcome of the demands and efforts of the legal profession itself.

It is well that this is so, for the need of well-trained lawyers is greater now than ever before. The great expansion of trade and business, incident to modern conditions, the multitude of statutes and decisions, the complexity and intricacies of widening litigation all call for higher training and better equipment for aspirants to the legal profession.

This important subject was taken up by the local, State, and National Bar Associations, and has been carried on from year to year, through reports of committees, and addresses of eminent judges and lawyers, all with the view to improve the quality and method of instruction furnished to students of the law in this country.

One of the effects of this agitation has been the develop-

ment and organization of the National Association of Law Schools in the summer of 1900, with the view to mutual assistance and improvement, and the raising of the standard of professional education in this country.

It is also to be noted that the American Bar Association which from its organization has encouraged and contended for legal education in its broadest and most liberal character as one of its most prominent objects, has established a Section on Legal Education.

The organization of the National Association of Law Schools arranged for a standing minimum course and requirements for admission and graduation to be complied with by all schools joining the association and will no doubt lead to the lengthening and broadening of the course, and perhaps, to greater uniformity in the methods of instruction. In fact one of the conditions of membership is that after the year 1905 the period of instruction shall not be less than three years in any of the schools comprising the Association.

Indeed it has become to be realized very generally in this country by the legal profession, the law schools, and in the legislatures of many states, that the time has passed when it can be considered that one year's study either in a law school, or in a lawyer's office is sufficient to fit a young man for admission into the legal profession.

In fact the tendency is very strong throughout the country to extend the period of study and preparation in the law schools to three or even four years, and to discourage altogether the attempt to acquire a legal education by studying in a lawyer's office.

In this connection it may be remarked that conditions have very greatly changed. The lawyer of to-day with whom it would be worth while for a young man to study law is a far busier man than the lawyer of some years ago. The increase in litigation and the number of courts not only fully

occupies his own time but have made the stenographer and typewriter a necessity, and who now do the work the law student formerly did. The result is the law student in an office can receive but little of the attention of the lawyer, and the practical work from which he once absorbed a little law is now done by others. Indeed he now finds himself out side of the flow of business going on about him and soon acquiring the feeling that he is an intruder, or interloper, he loses interest in his studies and tires of the situation. So great has become the change in these respects that, as matter of fact, comparatively few lawyers care to have law students in their offices.

In the years 1896 and 1897, the State of Alabama fell into line with the movement for securing better and more thorough qualifications for applicants for admission to the bar.

In the Law School of the University where the course from the organization of the school in the year 1873 up to and including 1896 the course of instruction had embraced but one year, and the instructors had been learned members of the bar who divided their time between their practice and the duties of instruction, the trustees of the University in the last named year reorganized the law school by providing a faculty whose time was required to be given entirely to the school and extended the course of instruction to two years.

While the remarkable results achieved by the learned and distinguished gentlemen under the old system, viz: Sommerville, Hargrove, McEachin, Van de Graaff, Jones and others, as exhibited in the successful careers of so many of their students, is a monument to their learning as lawyers, industry and ability as law instructors, yet it is believed that the change to the two years course is a distinct advance. It offers the student a wider range of instruction, he is less hurried in his work, and necessarily his work is more

thorough and satisfactory, and, furthermore, the school is brought into harmony with the prevailing sentiment of the country.

In 1897 the Legislature enacted a statute regulating the examination and admission of applicants to the Bar, with the provisions of which all lawyers in Alabama are familiar.

The statute was prepared by and enacted at the instance of your body and is beyond all question a vast improvement on the former loose, unequal and inadequate plan.

Your committee in order to ascertain as far as practicable the views of those who are charged with the duty of administering this statute as to its practical operation and effect, and whether any changes are desirable, wrote letters to each of the chancellors and circuit judges of the State, and to each of the justices of the Supreme Court asking suggestions from them. Letters were also written to the Attorney General and Clerk of the Supreme Court.

The Attorney General replied making no suggestions but referring the committee to the Supreme Court judges as better prepared to give the practical workings of the statute. He added that, according to his observation, the men who are admitted to the Bar since the present statute was enacted are decidedly better qualified than was formerly the case. He also states that during the short time he had been in office he knew of two lawyers from other states who desired to be admitted to the Bar in Alabama but abandoned the idea on finding they would have to submit to the examination required by the statute.

None of the circuit judges made reply to our letters. Only one chancellor replied and he merely expressed the opinion that the statute imposes a burden upon the courts of which they ought to be relieved.

Judge Haralson, of the Supreme Court, writes that the present statute is as good as could well be devised and is a

vast improvement on anything we ever had before. He, however, urges the objection that it takes up time of the Supreme Court judges that ought to be occupied with more important duties. He refers to the attempt made four years ago to pass a bill prepared by one of the judges of the court proposing a different plan but which was defeated in the Legislature. The bill referred to, your committee believes, embodied substantially the same general plan set forth in Chief Justice McClellan's letter hereinafter quoted. Judge Har-also gives the information that about one-third of the applicants under the statute failed in their examination.

Chief Justice McClellan writes as follows, to-wit :

"If the present system of examinations and admissions is to be in the main continued, the statute should be amended so as to provide that the admission should be ordered and had in the Supreme Court based upon certification from the examining court of the finding of qualifications other than knowledge of the law and of the oath there administered provisionally and upon approval as now by judges of the Supreme Court of the examination and a fee of \$5.00 or \$10.00 should be imposed for the license issued here. This is necessary to the keeping of a roll of the attorneys of the Supreme Court which I consider a matter of sufficient importance to require this change in the law. Surely the Supreme Court ought to know who are entitled to practice before it, and this is impossible under the present statute.

But I am not in favor of maintaining the present system of examinations. It requires too much of the time of the examining courts and far too much of the time of the judges of this court, all of which as everybody knows and recognizes is needed for the judicial work of the court. A rough epitome of the scheme I heartily favor is this.

"Let the Supreme Court appoint a board of examiners to consist of three or five men, have one of them take the exam-

ination of any given applicant in writing and submit it to the full board, have a majority of the board determine as to the sufficiency of the applicant's knowledge of law from such examination and if found sufficient certify the fact to the Supreme Court which shall thereupon make an order of admission and issue license. The examining member of the board shall also investigate the applicant's moral fitness, his age, etc. and these matters should be passed upon by the board and certified to the Supreme Court. The application should be addressed to the Supreme Court and filed with the Clerk. It should be accompanied by a fee of say \$25.00 to cover per diem and mileage of members of board and a license fee of \$5.00. Per diem should be \$5.00, mileage should be enough to cover transportation and hotel expenses. \$25.00 would suffice and less might. If application is rejected \$5.00 for license to be refunded. Of course there would be a howl in behalf of "the poor man" against a statute providing this system. But there is nothing in it. It is perfectly reasonable, just and fair that applicants for admission to the Bar should pay the expense. Admission to no other learned profession, or even skilled calling, can be gained without a great deal more of expense than this plan contemplates. It is a matter of private and public concern whether A, assuming his fitness, should be admitted to practice, and he and not the public should pay for it. As it is now the State directly bears all this expense in the taking of the time of her paid officers from the governmental work committed to them.

"I trust you will present some scheme of this sort to the Bar Association and will induce that body to take hold of it and urge it upon the Legislature when it reassembles in September. If the Association indorses any such plan, a committee should be appointed to lay it before the Legislature and work for its enactment into law. The committee should not be large—three would be best, I think, certainly not more

than five, and it should be composed of men who will *work*. If the movement should be inaugurated and should reach the committee stage, I will take pleasure in aiding the committee in any way I can.

"These suggestions are hastily and more or less crudely set down here, but they are the result of a good deal of consideration of the subject."

While your committee favor Judge McClellan's plan and especially recognize that it would cure at least one conspicuous defect in the present system, viz: the want of uniformity in the examinations, still, in view of the opposition developed to the bill referred to by Judge Haralson, in a former Legislature which was substantially Judge McClellan's plan, and the short time the legislature can remain in session when it reconvenes in September, and the many important measures to be considered by it, your committee feels that it would not be an opportune time to attempt the proposed change, even if your body should approve the suggestion, but we report the letter of the Chief Justice in full in order that it may be preserved in convenient form for future consideration.

In the meantime your committee concur that the amendment to the statute suggested by the Chief Justice should be made by the present legislature, and recommend that the Committee on Legislation of this body be charged with the duty of preparing such an amendment and submitting it to the legislature for enactment so soon so the legislature re-assembles.

Your committee has referred to the change from a one year's course to a two years' course in the State Law School, and now urge that to some extent the beneficial effects from such change have been neutralized by the omission from our State statute of any provision fixing a minimum period of study for applicants for examination, and that it should provide that no applicant shall be eligible to examination who

has not studied law at least two years before making application for examination. Such an amendment would establish harmony in our state system as a whole, and promote that advancement for which the states are generally striving on this important question. If two years study is required at the State Law School, where the student has the advantage of daily instruction, discussions with fellow students, moot courts, etc., it certainly can not be said that it is unreasonable or improper that those who study elsewhere than at a law school should also be held to two years study before being admitted to practice.

This is now regulated by statute in many of the states, viz: In Colorado, Connecticut, Delaware, Illinois, Iowa, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Oregon, Rhode Island, Vermont, Wyoming, and the District of Columbia, three years study is required.

In Kansas, Louisiana, Maryland, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Washington, West Virginia, and Wisconsin, two years study is required.

In the majority of the states, the statutes fix no requirement as to literary education as a condition to the right of examination for admission to the practice, but practically all of the law schools have requirements of this kind, the large majority of them insisting upon at least a high school education, and very few requiring a college education. Perhaps it may be said the better opinion is that a college education should not be made requisite for entrance into a law school. In the Alabama school of law any person of good moral character is permitted to matriculate in the school of law, without preliminary examination if he is a graduate of a university, college, state normal school, accredited high school or academy, and, if not such graduate, he is either examined or required to take a course in English in the academic department, which he is privileged to do without additional cost.

The three prevailing systems of instruction in the schools of law are, first, the use of text books with expositions of the text, second, written or oral lectures, and, third, the case system. They each have their merits, but probably in the majority of schools, a combination of the three systems is employed and doubtless with the best results. The last mentioned plan (the combination plan) prevails in the Alabama school.

While the lengthening of the course of instruction to two years was a distinct advance in the line of progress, and for the present at least, is probably as far as we can go in this State, in view of the limited means of the large majority of those to whom we can look for patronage, it is to be hoped the time may soon come when a third year may be added.

Even in the two years course it requires great care and discrimination to elect from the large number of important subjects which of them shall be specialized, and many subjects are necessarily left to be touched on in a very general way by the faculty, and the two years are so fully required for theoretical instruction that sufficient time is not left for technical, practical instruction which consequently has to be acquired by the student, after his graduation, by actual experience.

It is self evident that a year's work of this kind added to the two years of theoretical instruction would be of incalculable benefit. Such additional year should be devoted not only to exercises in pleading and practice in civil, criminal and equity cases, but to all the practical work incident to a lawyer's office and practice. The instruction should include the organization of a law office, the keeping of such books and records as are usual, the filing away of papers, business correspondence, the compromise of cases, the writing of opinions, the making up of trustees' accounts, the administration of estates, and the numerous other details pertaining to the practice both in and out of the courts.

A year's instruction of this practical nature would not only subserve the best interest of the students taking the regular course, but would appeal strongly to young practitioners of the State who might be dissatisfied with their proficiency in such matters, and also to young practitioners from other states who might desire to come to Alabama to locate. It is to be hoped such a scheme may be put into effect in the near future.

Your committee also deeply impressed with the ever present and paramount necessity of indoctrinating the youth of our State with those great moral principles which lie at the foundation of all well rounded character; which are indispensable to the maintenance of the high ideals and honorable position of the legal profession, feel constrained in this day of keen rivalry, commercial rush, and rapidly increasing numbers of lawyers, to urge upon all who have in charge the training of young men for the law, whether in the schools or law offices, that this vital subject of instruction be not neglected.

A Code of professional Ethics was adopted by this Association many years ago, and by order of the Supreme Court was published in the 118th vol. of the Supreme Court Reports. It is recognized as a most complete and admirable code of ethics, and, in the opinion of your committee, in order to insure its being read by all young men coming to the Bar in this State, the statute regulating admission to the Bar should be amended by making it an additional subject upon which applicants are required to be examined, and your committee recommends that your Committee on Legislation be requested to take steps to that end during the session of the present Legislature.

Your committee regrets its inability to furnish any statistics showing the total number of young men annually admitted to the Bar in Alabama; the omission from our statute of a

provision such as is suggested in Judge McClellan's letter making it impracticable to do so. We can only give the numbers graduated from the Law School since its re-organization in 1897, to wit: (1898, all juniors—no graduates) in 1899, 12; in 1900, 28; in 1901, 26; in 1902, 34; in 1903, 37.

It may be also interesting to state that according to the latest accessible report of the United States Bureau of Education the law schools of the United States now number an even hundred, with 13,642 law students, over ten thousand of whom are in the the North Atlantic and North Central States, where the law course usually covers three years. The large proportion of law students in the schools of those States is attributed to the rigid written examinations which are required in such states before admission to the Bar, examinations which are said to be passed with difficulty by students who have received only an office training. In Alabama while we cannot give the number of applicants for admission under the state statute it appears from Judge Haralson's statement, above referred to, that about one-third of the applicants fail in their examination.

We also note that while, according to the same authority, (U. S. Bureau of Education) the number of law students has increased since 1892, over 100 per cent. The medical students have far outstripped them, there being in 1901, 154 medical schools and 26,757 students.

Perhaps our medical friends will pardon the intimation that the present generation of law students can contemplate this condition of things with some degree of complacency, with the expectation that, notwithstanding the rapid increase in their own profession, at least one branch of the practice will not fail them in the coming years, viz: *the administration of estates*.

Your committee cannot better close this report than by quoting from the admirable address on Legal Education de-

livered by Hon. Frances M. Finch before the State Bar Association of New York in 1901, as follows, to-wit:

"It is obvious that none of the purposes which we are organized to promote can be accomplished except by influences operating upon the members of the Bar themselves. If jurisprudence is to be cultivated it must be by individual lawyers contributing each a separate study to the general advance. If the law is to be reformed it must be done mainly by those who understand the mysteries of its mechanism, or mischief rather than mending will result. If the administration of justice is to be facilitated the Bench and the Bar must join in the needed changes and help each other to that end. If integrity and courtesy and brotherhood are to be secured to a greater extent than now exist it is through the members of the profession, guiding and shaping the activities of their own lives, that the improvement must come. It is plain, therefore, that every influence for good which it is possible for us to exert in the direction of our declared purposes must operate upon the individuals constituting the Bar, primarily and principally, or some degree of failure will bring its disappointment. So far, therefore, as our objects are unattained we must not fail to understand that it is to the lawyer himself that we must appeal; it is the lawyer himself whom we must educate and train to be and become the man we would have him. Any effort which does not strike home to each member of the profession and operate upon his head and heart, his intelligence and morality, the trend and character of his daily life, is quite sure to prove ineffectual.

"But all experience teaches us that such an effort, extending over a large body of men and expected to operate steadily though slowly through many years and upon changing and mobile varieties of character has its best chance, its most hopeful opportunity, when it begins with the young men, at

the threshold of their careers and before habit or circumstance has hardened them into ways which we desire to see improved. They are our source of supply. They pour in annually the fresh blood of their hopes and ambitions, and as the years run on they become the Bar and make it what it is. I am sure, therefore, that the work of our Association can best attain its declared objects by striving to make that student body in head and in heart, in manners and morals, in every aim and purpose, fully abreast of the standard of professional excellence which we have set before us."

In conclusion your committee recommend that the Committee on Legislation be requested and instructed to prepare and submit to the Legislature upon its re-assembling in September, amendments to the present statute regulating admissions to the Bar, as follows: First, requiring all admissions to be ordered and had in the Supreme Court upon certification from the examining court of the finding of qualifications other than knowledge of the law, and of the oath there administered provisionally, and upon approval of the judges of the Supreme Court as now provided by law and requiring a fee of ten dollars for the license issued by the Supreme Court.

Second, requiring two years study before applying for examination under the statute.

Third, making the Code of Legal Ethics of the Association a subject for examination.

Respectfully submitted,

W. S. THORINGTON, Chairman.

REPORT OF

Committee on Correspondence.

BY

FREDERICK G. BROMBERG, Chairman.

To the President and Members of the Alabama State Bar Association:

Notwithstanding that very prominent lawyers have publicly argued that uniformity of State laws was not to be desired, the work of unification steadily advances. It may be true, as Judge Rose, of Arkansas, contends, that the adoption of uniform State laws would reduce the Bar to the same condition as the individual merchant is by the great department stores, which, he says, are ruining the commercial life of our cities, though, if the analogy be good, it is clear that the result to the State as a whole will be advantageous, notwithstanding its effect upon the limited class of its members included within the legal profession. Those who have occasion to use department stores find them not an evil, but a convenience.

Judge Rose asserts, also, that the result of uniformity of laws would be stagnation, because "the uniform precludes the original." "If we once attained uniformity," he says, "we should have to write *finis* in the book of law, or all our work would be undone." (Address before the Arkansas State Bar Association, January, 1900). The reply to this ought to occur to every lawyer of these United States. The Federal laws are uniform, covering in their operation all the states

and territories, and the District of Columbia. Surely no one will contend, seriously, that life in this Union of ours is stagnating, because its laws are uniform. Moreover, there is, also, no end to amending the laws of the United States to meet new conditions, the result of progress in the arts and sciences of life.

It is the very expanding demands of commerce, manufactures and trade which are the forces urging us to uniformity of laws. The great merchant whose markets are the world, and who is contracting in other lands, instinctively recognizes that his security in dealing with others depends upon his own knowledge of the law of the territory within which he is dealing. On the other hand, those who deal with him recognize that it is well, also, for them to know the law of the forum in which their contracts are partly made. There is, therefore, on all sides, an irresistible undercurrent in favor of making law uniform throughout the civilized world.

FOOD ADULTERATION.

Amongst the new subjects proposed for unification of law, not thought of when this committee was organized, now more than twenty years ago, but which the increased requirements of public sanitation suggest, is one to protect people against food adulteration. The laws in force covering the subject in many states are so imperfect as to subject manufacturers and dealers doing business in more than one state to unnecessary annoyance and inconvenience. For instance, in the matter of labeling jelly containing other substances than fruit juice and cane sugar, Illinois, Michigan and Washington require the product to be marked "imitation fruit jelly." Minnesota requires it to be marked "mixed and adulterated." South Dakota "mixed" and "adulterated." Kentucky "adulterated" (or the name and amount of each ingredient). Other states

require only the name and percentage of each ingredient to be expressed on the label.

HOURS OF LABOR.

The widespread effects of labor organization which extend far beyond the limits of the State, the locus of the organization, have led to the serious consideration of the necessity of more uniform laws upon the subject of labor than now exist. As time is at the foundation of all labor contracts, it is proposed to have uniform hours of labor throughout the United States, and the legislature of Massachusetts, last year, adopted a concurrent resolution favoring an amendment to the United State Constitution which should give to Congress the power to enact laws regulating the hours of labor in the various states, according to a uniform system. It also added two members to its Commission on Uniform Laws to represent workmen and manufacturers, respectively, in order to further the adoption of the eight-hour law throughout the United States.

UNIFORM LAWS.

Ohio and Louisiana, in the last year, created boards for promoting uniform legislation.

NEGOTIABLE INSTRUMENTS LAW.

The State of Alabama seems to be no nearer the adoption of this law than it was at the time of your committee's last preceding report. Although the Legislature is in session, no steps are being taken to put Alabama in line with the other twenty states of the United States which have adopted it. The law has been adopted in the following states and years, respectively, viz: Colorado, 1897; Connecticut, 1897; Florida, 1897; Maryland, 1898; Massachusetts, 1898; New York, 1897; North Carolina, 1899; North Dakota, 1899; Oregon, 1899; Pennsylvania, 1901; Rhode Island, 1899; Tennessee,

1899; Utah, 1899; Virginia, 1898; Washington, 1899; Wisconsin, 1899; Arizona, 1901; Iowa, 1902; New Jersey, 1902; Ohio, 1902; and Congress of the United States, for the District of Columbia, 1899. The law is practically the same in all these jurisdictions. It is now in force in the above named states, containing more than one-half the population of the country and at least sixty per cent. of its wealth and business transactions. We, therefore, again recommend the adoption of the following resolution :

Resolved, That the Committee on Legislation be and is hereby instructed to request the General Assembly of Alabama to enact into law the Bill of Exchange Act as set out in the report of this Committee at the meeting of June 17th and 18th, 1898, at pages 108-141 of the report of that meeting.

There were, also, certain laws suggested for enactment recommended by the National Conference of the State Board of Commissioners, held at Saratoga Springs, N. Y., August, 1900, which appear as part of the report of this Committee made June 28th and 29th, 1901, and to be found on pages 143 and 144 of the report of that meeting. Your Committee would, again, recommend the adoption of the following resolution :

Resolved, That the Committee on Legislation be and is hereby instructed to request the General Assembly of Alabama to enact into law the draft of laws, viz: To establish a law uniform with the laws of other states relative to the execution of wills; also, to establish a law uniform with the laws of other states relative to the probate in this State of foreign wills; also, to establish a law uniform with the laws of other states for a uniform standard of weights and measures; as they appear on pages 143 and 144 of the report of the meeting of 1901.

Respectfully submitted,

FREDERICK G. BROMBERG, Chairman.

Wantonness in Personal Injury Cases.

BY

PAUL SPEAKE.

Probably no subject in legal jurisprudence has been more often considered or undergone more changes or been more greatly developed in recent years than has this subject of wantonness.

It is difficult to define, difficult for the plaintiff to prove, and yet more difficult for defendant's counsel in a damage suit to keep out of the case, as civilization seems to have progressed to that stage where wantonness can at least be "boldly asserted," if not "plausibly maintained," in every case where damages are claimed from railroad corporations in suits for personal injuries.

Formerly the battle was waged and the case won or lost on the issues of simple negligence and contributory negligence. They still occupy an important place in this character of litigation, and yet they have been more or less forced into the background by this doctrine, which, if old, is yet constantly bobbing up in some new garb or trapping.

Notwithstanding the importance of the subject, however, and its marvelous growth and development, we do not find it treated at any length, or indexed at all, in most of the text books and digests. For instance, the Century Digest and Rapalje & Mack's Digest of Railway Law do not index the subject separately, or treat it otherwise than as the equivalent of gross negligence, under the general head of Negli-

gence. The same may be said of the American and English Encyclopedia of Law and Sherman & Redfield and Barrows, in their works on Negligence, and probably of other text-book writers. In none of them, so far as I have seen, is it considered exhaustively in the various lights in which it is viewed or the differing phases under which it has arisen in Alabama jurisprudence.

The Supreme Court of the United States has not discussed the question, so far as I am aware, except possibly in cases where there was a discovery by the trainmen of the actual peril of the person injured and a failure of preventive effort thereafter, and has not applied the doctrine to much frequented crossings in populous localities, where a high rate of speed, coupled with other acts or omissions, has brought about an injury, but without any actual knowledge on the part of the trainmen of actual peril in the particular case. Indeed, there are cases in the U. S. Supreme Court Reports, where contributory negligence has been recognized as a good defense, although the facts were strong enough to have been denominated "wanton" had they been tested by the rules prevailing in Alabama (144 U. S. 408; 139 U. S. 469).

Some of the Circuit Courts of Appeals and some of the courts of other states, however, are as liberal in their definition of wantonness and in the application of it as is our own court.

But it is not my purpose to review or attempt to consider the subject in detail except in the light (or shadow) of the Alabama decisions.

If wantonness, such as will overcome the defense of contributory negligence, or will authorize the recovery of exemplary damages where the injury does not result in death (for under the Act to Prevent Homicides, where the injury does result in death, punitive damages are recoverable even for simple negligence) be considered as the equivalent of and no

more than gross negligence, it means only a greater want of care than is implied by the term "ordinary negligence," and "after all" (it has been said) "gross negligence means only the absence of the care that was requisite under the circumstances" (91 U. S. 494). This definition is not very elucidating, however, as simple negligence itself has been said to be "a want of care under the circumstances" (Sherman & Redfield on Neg., 5th ed., page 56, sec. 49 note). Our court may have had these definitions in mind when it spoke of "the shadowy and indefinable line that distinguishes gross from ordinary negligence." (Arnold's Case, 80 Ala. 600).

It will aid us, in determining what wantonness is, to learn what it is not: It is *not* the mere want of ordinary care; nor the mere breach of any statutory duty; nor the failure to have a platform at a depot for passengers or to furnish light when needed; nor the failure to keep a lookout; nor the speed of the train, dissociated from other circumstances; nor the want of a headlight; nor the placing of cars on a side track at a crossing; nor the mere failure to resort to preventive efforts to stop or check a train after the discovery by the trainmen of one in peril on the track (Lee's Case, 92 Ala. 262; Chewning's Case, 93 Ala. 24; Richards' Case, 100 Ala. 365; Meador's Case, 95 Ala. 137; Burgess' Case, 114 Ala. 587.)

It is not simply gross negligence. Sherman & Redfield define gross negligence to be "that entire want of care which would raise a presumption of conscious indifference to consequences; it implies a thoughtless disregard of consequences without the exertion of effort to avoid them." But under our decisions, in wantonness there must be something more than "thoughtless disregard of consequences:" there must be "a conscious indifference to probable consequences" (Carrington's Case, 88 Ala. 472; Arnold's Case, 80 Ala. 600; Stringer's Case, 99 Ala. 397; Vaughan's Case, 93 Ala. 269).

Nor is wantonness, recklessness simply, (Crawford's Case, 89 Ala. 240; Crocker's Case, 95 Ala. 412; Farmer's Case, 97 Ala. 141; Barker's Case, 96 Ala. 435; Stringer's Case, 99 Ala. 397.

"The word 'reckless' has a wide range of meaning. In its milder sense it may imply mere inattention to business—thoughtlessness—indifference, carelessness, negligence; or import a heedless disregard of obvious consequences. . . . One may be heedless, rash, or indifferent to results, without contemplating or intending these consequences. . . . The degree of recklessness which will avoid the defense of contributory negligence is such as implies a willingness or a purpose to inflict the injury complained of—a *consciousness* that the unwarranted conduct will *inevitably* or *probably* lead to wrong and injury. . . . In charging recklessness in general terms, no more is necessarily implied than such mere negligence, thoughtlessness or inadvertence as could not be regarded as the equivalent of intentional wrong, and which, therefore, would be insufficient to overcome the defense of contributory negligence." (Crocker's Case, 95 Ala. 412.) The degree of recklessness which will overcome the defense of contributory negligence "must raise such strong implication of reckless indifference as to supply the bad element of willfulness or intention, and abstention from preventive activity, which, if exerted, might avert the catastrophe. This is the degree of recklessness which intensifies and magnifies negligence, until it becomes the legal and moral equivalent of willful or intentional wrong. Less than this, if held sufficient in degree, would, in many conceivable cases, secure to the complaining party a right of recovery, notwithstanding his own contributory negligence may have been as gross and reckless as that of defendant." (Crawford's Case, 89 Ala. 240; Sampson's Case, 112 Ala. 425).

Again, wantonness is not necessarily an intentional or will-

ful wrong (Tanner's Case, 60 Ala. 621; Bowers' Case, 110 Ala. 328; Arnold's Case, 80 Ala. 600; Orr's Case, 121 Ala. 489), although it is the legal and moral equivalent thereof. It is not willfully running a train at a high rate of speed towards and to a railroad crossing (Jacobs' case, 92 Ala. 187.) It is not 'propelling and rushing a heavy freight train at a speed of 25 miles an hour, in a wanton and reckless manner, in approaching the depot' in the town of Madison, a town of 500 inhabitants, (Martin's Case, 117 Ala. 367). It is not "wantonly or willfully failing to blow the whistle or ring the bell" when approaching a crossing (Anchor's case, 114. Ala. 492). It is not "wantonly or intentionally causing an engine to propel a car against another car with too great force, with notice that one is between the two cars and in great danger." (Bunt's Case, 131 Ala. 591).

The doctrine arises in two aspects, the one involving actual knowledge on the part of the wrongdoer of actual peril in the particular instance; the other, implying such knowledge from circumstances, such as the extent of user of the place where the injury occurs, the alleged wrongdoers knowledge thereof, etc., etc. These two aspects in which the subject is considered are pointed out in Lee's Case (92 Ala. 262,) as follows:

"Willful and intentional wrong—a willingness to inflict injury cannot be imputed to one who is without consciousness, from whatever cause, that his conduct will inevitably or probably lead to wrong or injury. In the case at bar, this consciousness could not exist on the part of defendant's employees until they knew plaintiff's wagon and team were in a position of danger; and no degree of ignorance on their part of this state of things, however reprehensible in itself, could supply this element of conscious wrong or reckless indifference to consequences, which, from their point of view, would probably or necessarily ensue. . . . Notwithstanding plaintiff's contributory negligence, he may yet recover, if, in a

case like this, the defendant's employes discover the perilous situation in time to prevent disaster by the exercise of due care and diligence, and fail, after the peril of plaintiff becomes known to them as a fact—and not merely after they should have known it—to resort to all reasonable effort to avoid the injury. Such failure, with such knowledge of the situation and the probable consequences of the omission to act upon the dictates of prudence and diligence to the end of neutralizing plaintiff's fault and averting disaster, notwithstanding his lack of care, is, strictly speaking, not negligence at all, though the term 'gross negligence' has been frequently used in defining it, but it is more than any degree of negligence, inattention or inadvertence—which can never mean other than the omission of action without intent, existing or imputed, to commit wrong; it is that recklessness, or wantonness, or worse, which implies a willingness to inflict the impending injury, or a willfulness in pursuing a course of conduct which will naturally or probably result in a disaster, or an intent to perpetrate wrong. . . . But nothing short of the elements of actual knowledge of the situation on the part of defendant's employes, and their omission of preventive effort after that knowledge is brought home to them, when there is reasonable prospect that such effort will avail, will suffice to avoid the defense of contributory negligence. . . . It is true, there is what may be termed a shading of the doctrine we have been considering, to the effect that to run a train at a high rate of speed and without signals of approach at a point where the trainmen have reason to believe there are persons in exposed positions on the track, as over an unguarded crossing in a populous district of a city, or where the public are wont to pass on the track with such frequency and in such numbers—facts known to those in charge of the train—as that they will be held to a knowledge of the probable consequences of maintaining great speed without warnings,

so as to impute to them reckless indifference in respect thereto, would render their employer liable for injuries resulting therefrom, notwithstanding there was negligence on the part of those injured and no fault on the part of the servants after seeing the danger. The doctrine is not based on the idea that they ought to have sooner observed the danger, however, but on the ground that they knew of its existence—of the presence of people in positions of peril, as a matter of fact, without seeing them at all in the particular instance.”

“A purpose or intent to injure is not an ingredient of wanton negligence. Where either of these exist, if damage ensues, the injury is willful. In wanton negligence, *the party doing the act or failing to act, is conscious of his conduct, and without having the intent to injure, is conscious, from his knowledge of existing circumstances and conditions, that his conduct will likely or probably*” (or “*inevitably*,” Hall’s Case, 105 Ala. 599) “result in injury. A mere error in judgment as to the result of doing an act or the omission of an act, having no evil purpose or intent, or consciousness of probable injury, may constitute simple negligence, but can not rise to the degree of wanton negligence or willful wrong” (Bowers’ Case, 110 Ala. 328; Martin’s Case, 117 Ala. 367.)

“If, in good faith, he (the engineer) did what he thought was best, it matters not how far he may have failed in skill, or erred in judgment, or what mere inadvertence or negligence may have caused him to do or omit what was best not to have been done or omitted, he can not be said to have willfully or wantonly caused the injury” (Swope’s Case, 115 Ala. 287).

“To the implication of willfulness, or wantonness, or reckless indifference to probable consequences, it is essential that the act done or omitted should be done or omitted with a knowledge and present consciousness that injury would prob-

ably result; and this consciousness is not to be implied from mere knowledge of the elements of the dangerous situation, for this the party charged may have and yet act only negligently and inadvertently in respect of the peril, but it must be alleged either in terms that he willfully or wantonly or with reckless indifference failed to discharge the duty resting upon him, or that he was at the time conscious that his course would probably result in disaster." (Brown's Case, 121 Ala. 221).

"It was settled in Lee's case and again in Webb's case that the knowledge of danger, upon which, in connection with the absence of subsequent diligence to avoid its consequences, a charge of wantonness might be sustained, need not be that which is presently acquired through the physical senses; the party charged need not on the particular occasion see or hear, or through other sense become advised of the actual presence of every element necessary to constitute the danger that really exists. If he knows of a crossing where people are wont to be in such numbers and with such frequency, a fact also known to him, as that to run a train along there with such great speed as not to be readily controlled, and which will not admit of the escape of persons crossing the track, his conduct, he having in mind that he was approaching such a place, would authorize the imputation of wantonness, willfulness or reckless indifference to consequences, though in point of fact he did not in the particular instance know of the presence of persons in exposed positions," (Greenwood's Case, 99 Ala. 501).

The authorities have been in some confusion as to what constitutes wantonness after the discovery of peril. For instance, it was asserted in Tanner's case (60 Ala. 621) that if, after one's peril on the track is discovered, "those in control of the train fail to employ proper skill and diligence to avoid the injury, when such skill and diligence, if promptly resorted to, might have prevented it, this is wanton

or reckless negligence, for which the railroad will be held accountable." This definition was followed and applied in numerous cases, with the substitution of the expressions, "reasonable care and diligence," "due care and diligence," for the words "proper skill and diligence." (Frazier's Case, 81 Ala. 185; Crawford's Case, 89 Ala. 240; Black's Case, 89 Ala. 313; Watson's Case, 90 Ala. 68; Chewning's Case, 93 Ala. 24; Vaughan's Case, 93 Ala. 350; and Hurt's Case, 101 Ala. 34). But in later cases the principle will be found to be declared that to constitute wantonness or willfulness on the part of the servants, in their omission to use proper preventive effort after discovery of the peril, they must have been *conscious* at the time that they were omitting to use the means at hand which the circumstances reasonably required to avert the injury," and that "willfulness and wantonness can not be affirmed of a mere negligent, inadvertent, unintentional failure to use the means at hand to avert injury, even though the employes knew the danger; *there must be a conscious omission to use a known means to a known end*, after having discovered, and therefore at the time knowing, the peril to be averted by such use," (Burgess' Case, 114 Ala. 587; s. c. 119 Ala. 555; Markee's Case, 103 Ala. 160; Swope's Case, 115 Ala. 287).

And yet there may be a mere negligent, listless, inadvertent failure to resort to preventive means to stop a train after one's peril has become apparent, sometimes spoken of as "negligence supervening contributory negligence," or "the second stage of peril," which will authorize a recovery notwithstanding prior contributory negligence, provided there is no contributory negligence on the part of the person in danger after he becomes conscious of his danger. In such a case the prior contributory negligence is considered remote, rather than proximate. (Frazier's Case, 81 Ala. 185; Brown's Case, 121 Ala. 221; Martin's Case, 131 Ala. 269).

The practical result of this doctrine is probably the same as where wantonness is an issue, as it has the effect of getting rid of the issue of contributory negligence in most instances, and although the damages recoverable in such cases where the injury does not result in death, are compensatory only, yet a jury does not ordinarily stop to "split hairs" between compensatory and punitive damages.

Other matters relating to wantonness which have undergone changes will readily occur to the mind. Among them: the old doctrine that under a complaint counting on simple negligence only, a recovery could be had for wantonness, which was exploded in Markee's case, 103 Ala. 160; the doctrine, recognized if not asserted, in several cases (Lee's Case, 92 Ala. 262; Webb's Case, 97 Ala. 308; Glass' Case, 94 Ala. 581; Nave's Case, 96 Ala. 264; Stringer's Case, 99 Ala. 397), that wanton or reckless contributory negligence will prevent a recovery for wantonness on the part of the defendant, which the Markee case also dissipated. But it would seem that it was not the intention of the writer of the opinion in the Markee case (Coleman, J.) to dissipate this doctrine as effectually as the opinion has the effect of doing, for we find him saying in a later case (Martin's Case, 117 Ala. 367), "In the opinion of the writer it was not intended by anything said in the Markee case to relieve a person from the consequences of such a dangerous act, voluntarily and knowingly assumed, as the attempt to cross a railroad track, in dangerous proximity to and in front of a rapidly approaching train." This was said in support of Coleman; J.'s opinion that the following charge should have been given in the Martin case (the majority of the court holding that it did not answer the count of the complaint charging wantonness: "If the jury believe from the evidence that Mrs. Martin approached the railroad crossing, wishing to cross, and that she saw or heard the train approaching, and that she for herself measured the dis-

tance and time it would take to cross, and, acting upon her own judgment, undertook to cross, then I charge you that she assumed the risk, and her administrator cannot hold the railroad company responsible, unless Mrs. Martin's intention was apparent to the employes of defendant operating the train, and after her perilous intention and conduct became apparent, by the exercise of due care and diligence the injury could have been avoided."

- Whatever difficulties may have arisen in defining wantonness, the greatest trouble comes in the application of the definitions. The doctors of course know what typhoid fever is, but whether or not the particular patient has typhoid ever—there's the rub!

A consideration of some of the cases, where the definitions have been applied, may be of interest, if not of real benefit: It is *not* wantonness, but simple negligence only, for trainmen, switching cars in the City of Birmingham, about 100 yards from the Birmingham depot, at a place where people "are constantly passing," to back the train at a speed of six miles an hour, having box cars in front of the engine, so as to conceal the track from the view of those in charge of the train, without any watchman or employe on or near the train to look ahead and warn persons of the approaching danger, or have the train stopped, (Sullivan's case, 59 Ala. 272); or to run a train at 25 miles an hour without signals of approach towards and across the intersection of 6th Avenue and 27th Street, in Birmingham, "a crossing of a considerably traveled public road over the railway" (Lee's Case, 92 Ala. 262); or at 15 miles an hour without signals at the intersections of said streets in their extensions just outside the city limits (Maddox Case, 100 Ala. 618); or to push a box car in the nighttime across the 24th Street crossing in Birmingham, without signals or a light on the car, or a watchman (Crawford's Case, 89 Ala. 240). And yet it is wantonness to back a train

at 30 miles an hour in the day-time without signals, over said 24th Street crossing in Birmingham, where residents "went backwards and forwards to a great extent over the crossing," there being an ordinance limiting the speed to 4 miles an hour (Webb's Case, 97 Ala. 308).

It is *not* wantonness to back a train at a speed of 15 or 16 miles an hour, in the corporate limits of Opelika, pushing passenger and freight cars ahead of the engine, without anyone stationed on the cars or elsewhere, to keep a lookout ahead, and without giving signals by bell or whistle, although the person walking on the track (who was injured) was in full view of the trainmen for 400 yards (Shearer's Case, 58 Ala. 672); or, as to a trespasser on a trestle in town in the day-time, to run a train at 40 miles an hour, when the view was unobstructed for 150 yards from the trestle, and the engine might have been stopped in 80 to 150 feet, and the fireman was seen at the time to be looking out of the engine window down the track towards the plaintiff (Ross Case, 100 Ala. 368). And yet a recovery for wantonness may be had where the speed of the train was 35 or 40 miles an hour, and a child (trespasser) between 7 and 8 years old was discovered by the engineer on the track when the train was 400 yards from it, and by the use of the means at his command the train could have been stopped in 200 yards (Burgess Case, 119 Ala. 555).

It is *not* wantonness to run a train at 20 miles an hour on a straight track towards and over a public road crossing in the country without signals of approach, while an excursion train on a parallel track was standing at the crossing discharging passengers (Leak's Case, 90 Ala. 161); but it *may be* wanton for a yard-master, knowing that a train is coming on a certain track, to forget that fact and permit an excursion

train, loaded with many passengers, to start off on the same track (Vormus' Case, 97 Ala. 326).

It is *not* wantonness to run at a speed of 8 miles an hour, when the train could be stopped in 20 feet, at a junction point, without furnishing a platform or lights, or keeping a proper lookout, or giving cautionary signals (Chewning's Case, 93 Ala. 24); or, as to one walking on the track in a sparsely settled neighborhood in Opelika, to run the train at a high rate of speed, without signals of approach or a headlight (Meador's Case, 95 Ala. 137); or to run a train at 20 miles an hour, without signals of approach, along Coffee Street in Talladega, at a place not a crossing, but on a street which "was very much traveled by persons on foot and often in vehicles and which was much crossed and re-crossed at this point" (Stringer's Case, 99 Ala. 397); or to back a train at 25 miles an hour without signals, at a private crossing, which was sometimes closed, but, when open, was used by anybody and everybody who chose, where there were 40 or 50 dwelling houses scattered along on both sides of the track (Linn Case, 103 Ala. 134); but it *may be* wantonness to run a train at 35 or 40 miles an hour, without signals of approach, through the town of Hartselle, over one of the main crossings, at which people were "frequently" crossing—facts known to those in charge of the train (Orr's Case, 121 Ala. 489).

It is *not* wantonness for the engineer to be looking back while going at a speed of 50 miles an hour in the outskirts of Gate City, a town of 1200 or 1500 inhabitants (Peters' Case, 135 Ala. 583); or to back a train at 4 miles an hour, after giving signals and with a watchman across a street in Mobile, where people were known by the employees to be constantly crossing (Gaynor's Case, 33 So. Rep. 808); or to run an engine in the night-time at 4 miles an hour, with bell ringing and headlight burning, over the intersection of Beauregard and Water Streets in Mobile, though the crossing was used to

a great extent, but there were only three persons at or near it at the time of the injury, (Shelton's Case, 34 So. Rep. 194); or for the employes to "recklessly and wantonly propel an engine" at such a high rate of speed in a populous town of 500 inhabitants (Goodwater) that they could not stop it before reaching the crossing, after they had attained a point of view 200 yards away, from which they could see a person on the track at the crossing, although the servants well knew of the street crossing, and that it was a main thoroughfare in the town, and that people crossed the track there frequently during every day and that some person would probably be crossing said track at said time and place, and they were alleged to be wholly indifferent to the consequences of the acts and conduct (Forshee's Case, 125 Ala. 199, 5th count in complaint); and yet a jury may find wantonness, where a freight train is run at 30 miles an hour, without signals of approach, on a track straight for one-quarter of a mile, in the day time, over the main crossing in the town of Madison (another town of five hundred inhabitants) where the amount of crossing was once in every ten minutes—facts known to those in charge of the train, but no ordinance regulating speed (Martin's Case, 117 Ala. 367; 131 Ala. 269).

It is *not* wantonness to run a train at 16 miles an hour in the day-time, without making any efforts to stop, or sounding the alarm, when the engineer and fireman saw a man approaching the track as if intending to cross and without looking toward the train (Bower's Case, 110 Ala., 328; Burson's Case, 116 Ala. 198): but a jury may find wantonness, where a man in a buggy, the buggy top being enclosed by curtains which prevented the occupant from seeing *and hearing*(?) the approaching car, was struck by an electric car which was going at a speed of 5 or 6 miles an hour; the man being 25 or 35 feet from the track when he turned his horse and buggy towards the track for the purpose of crossing it, and the car

being then 100 or 125 feet away, with nothing to prevent the motorman from seeing, and the car proceeding without signals of its approach (Smith's Case, 121 Ala. 352).

In pleading, wantonness has caused much tribulation to lawyers and much work for the courts. The lawyers seem to have had difficulties in various directions—sometimes stating facts constituting simple negligence and styling them "wanton;" sometimes coupling the words "negligently and carelessly" with "wantonly" in charging the wrongful act; sometimes failing to state facts showing a knowledge on the part of those in charge of the train of the elements of the dangerous situation, or facts charging them with such knowledge; sometimes confusing the terms "notice" and "knowledge" in this connection, or alleging them in the alternative (Bunt's Case, 131 Ala. 591; Martin's Case, 117 Ala. 367; Anchors' Case, 114 Ala. 492; Forshee's Case, 125 Ala. 199; Freeman's Case, 134 Ala. 354; Mitchell's Case, 134 Ala. 261).

But it has been held that a general averment of wantonness as the cause of the injury, without stating the facts constituting it, is sufficient (Forshee's Case, 125 Ala. 199; Burgess' Case, 114 Ala. 587).

It is worth questioning just here, why such should be the law, or why a more general allegation of negligence or of wantonness is sufficient on the part of the plaintiff in charging the wrong-doing, while a defendant, pleading contributory negligence, is required to state specifically and in detail the facts constituting it, and to prove the specific act of contributory negligence pleaded.

I have not met with anyone who could give a satisfactory explanation for this distinction. It is said, the reason of the rule allowing a general averment on the part of the plaintiff is that the facts are peculiarly within defendant's knowledge. This may be true, as to the speed of the train, whether statu-

tory signals were given, or a lookout kept, etc.,—although some witness is nearly always found for the plaintiff who testifies as though he has as much knowledge on the subject as the trainmen, and whose testimony in rare(?) instances goes farther with the triers of the facts than the testimony of those who, this rule teaches us, have a peculiar knowledge on the subject!

But, however this may be, the trainmen passing a certain point once a day or even less often cannot be said to have any peculiar or exclusive knowledge as to the extent of user of the crossing or the number of persons who cross there daily—and this is a controlling element in wantonness. Furthermore, the reason given for the rule applies just as strongly against the plaintiff on the issue of contributory negligence, as against the defendant on the issues of negligence and wantonness, for the facts constituting the contributory negligence are just as much within the knowledge of the plaintiff as the facts constituting negligence or wantonness are within defendant's knowledge, and it is just as much hardship upon a defendant to force him to rely on plaintiff to prove his plea as upon the plaintiff to force a reliance on defendant to prove his complaint. If a general allegation is sufficient in the one case, (and this ought not to be in the absence of a form prescribed by statute), justice and fairness and sound logic should permit a general averment in the other. It would have been well had *Markee's case*, while trying to settle the law in other respects, have settled the reason for the rule in this, or else unsettled the rule.

It has been held that where a complaint counts on simple negligence, a replication to pleas of contributory negligence, averring wantonness, is a departure (*Markee's case*, 103 Ala. 160); but counts for wantonness may be joined with counts for simple negligence, either originally or by amendment (*Markee's case*, *supra*; *Forshee's case*, 125 Ala. 199).

It has been held that where damages are claimed for wantonness in consciously failing to use preventive efforts after the discovery of peril, a recovery cannot be had for wantonness arising from circumstances—a high rate of speed, with other conditions, at a much used crossing—facts known to the persons operating the train (Burke's case, 124 Ala. 604); but it seems that where the complaint is based on the latter species of wantonness, a recovery may be had, for wantonness after the discovery of peril (Martin's case, 131 Ala. 269).

The extent to which wantonness has protracted pleading, and the consequent time spent by the trial courts and the Supreme Court in settling the pleadings in such cases, is something startling, and it is regrettable, for the sake of the speedy despatch of business and for the public good, that special pleading cannot be avoided or curtailed in these cases. But there is much more of it than is really requisite; for instance, our Supreme Court, somewhat waggishly, points out a case in point as follows: After commenting on pleadings and demurrers thereto down to the rejoinder, it says: "All which was provable either under the pleas of contributory negligence or upon issue joined on the replication. Demurrers to this rejoinder having been overruled, plaintiff took issue on it and filed two special surrejoinders, which, after the manner of the rejoinder, but hearkened back upon matters already presented, to which defendant interposed a demurrer, of which the first and second assignments were plainly general, and the third and last, viz., that the surrejoinder is a departure from the complaint, is as plainly without merit, as the court held. Thereupon the defendant, *having apparently exhausted the nomenclature of pleadings*, offered to file a paper which came in the time and sequence of a rebutter, but which it called "A". This "A" proposed to escape all the negligence and willfulness charged in the

complaint by setting up that the trainmen could not stop the train after they saw the intestate, which fact was of course provable under the general issue. *But the court was of opinion that it was time to put a stop to this bandying back and forth of averments which were either already in the case or had nothing to do with it, and very properly declined to allow this "A" to be filed. And so they went to the jury.*" (Orr's case, 121 Ala. 501).

Without doubting the wisdom of the doctrine of wantonness, as it is defined in Lee's case and Bowers' case, and without doubting that more care should be required of railroads in the running of trains across or along *crowded thoroughfares in populous cities* than across the plains or over public or private road crossings in the country, and without doubting that the degree of care should increase as the conditions exist which call for its exercise,—I do doubt the wisdom of extending the doctrine, which was only intended for *crowded thoroughfares in populous districts*, to towns such as Hartsell and Madison (Orr and Martin cases). It seems to me absurd to say that where the extent of crossing is only one crossing in ten minutes (as in Martin's case), or six in an hour, or seventy-two in a day of twelve hours, that it is *likely* or *probable* or *inevitable* that some one will be using the crossing at any time a train may pass. As the track is not over six feet in width, one minute is a liberal allowance of time for a person to walk across it at an ordinary gait: this would leave nine out of every ten minutes in which there would be no one at the crossing, and the way would be clear for trains. During nine out of every ten minutes, then, it is not only probable, but certain, that the running of the train—no matter at what speed—cannot result in injury at the crossing. *Probable*, or *likely*, means "having more chances for than against," "having more evidence for than against," and *inevitable* is a yet stronger term. How, then

can it be said that the wrongful conduct will *probably* result in injury, or that the employees are chargeable with knowledge thereof, under such circumstances, (or in towns of only five hundred inhabitants?)

Another seeming weakness in the doctrine of wantonness, as applied to high speed, without signals, at crowded thoroughfares, is that the doctrine does not take account of the well-established doctrines that the railroad track itself is a warning of danger; that the train, by reason of its momentum, the greater distance required in which to stop it—no matter what its speed—and other considerations, has the right of way at public road crossings and elsewhere—and this, no matter to what extent the highway may be used; the train is not required to stop to allow the individual or the crowd to precede it at the crossing, but *vice versa*; the traveler must stop, look and listen, and the trainmen have a right to presume that he will do so, that he will not go on the track without looking in both directions, or, after having looked and listened, that he will not go in front of a train he has seen or heard; that his senses of sight and hearing are good; that, if he is on the track at a crossing as a train is rapidly or slowly approaching he will get off before the train reaches him. And when he is actually seen on the track, preventive effort is not required until it is seen that he is ignorant of his peril or cannot extricate himself therefrom. As trainmen may indulge these presumptions as to persons whom they actually see approaching or on the track at crossings and are not chargeable with wantonness or willfulness in acting on the presumptions (Bowers' case, 110 Ala. 328; Burson's case, 116 Ala. 198; Forshee's case, 125 Ala. 199), why can they not inculge a similar presumption and act upon it as to persons on a crowded highway, whom they do not actually see, but whose presence on the highway, either approaching or on the track, they are charged with

knowledge of? They could certainly indulge such a presumption as to each of those persons if he were actually seen, and the fact that the highway was crowded would not take away the right to indulge such presumption as to the crowd, individually or collectively. How then can it be *likely*, or *probable*, or *inevitable*, that these persons will violate these principles of self-preservation, when the presumption is the contrary?

These considerations are justified by expressions of our Supreme Court in several cases, and yet have not always been accorded their proper weight. "We must expect men to be ordinary men," says the court in one case (Forshee's Case). "No man of ordinary care and prudence would attempt to rush from a place of safety across the track in front of a locomotive. . . . It is not possible to conceive that any foot traveler need or could, with the proper use of his senses, ever go upon a railway in ignorance of the approach of a train sufficiently near to strike him before he goes over it."

Again: "The question is to be considered *from the point of view of the engineer*, and it is simply this: *Would a man of ordinary prudence*, in the place of the engineer, *have had a consciousness* that to run the engine on this crossing as this engine was run *would probably*, or *was likely*, or *liable* to, result in injury to somebody on the track at the crossing? . . . (Conceding that a man was on the track at a crossing, 75 or 50 feet from the engine, the court says) "Under these circumstances, conceding that the engineman thus saw Shelton, they undoubtedly had the right to assume that he knew of the approach of the engine, and would avail himself of the ample time and opportunity at his command to get off the track before the engine reached him. . . . *He was in no peril to the apprehension of prudent men in their position.*" (Shelton's Case, 34 So. Rep. 194). Again: "If at the time the engineer first saw deceased on the trestle, the latter's po-

sition was such that he could readily and without risk of injury have stepped off to a place of safety" (and that is always the position at a public crossing) "and thereby escaped being struck by the engine, the engineer had a right to presume that he would do so, and to act on the presumption until it became apparent to him that deceased was ignorant of his peril or for some reason could not, or would not, extricate himself from it." (Bush's Case, 122 Ala. 470).

Again: "One in the position of this engineer, called upon to exercise care to avoid danger from the acts of others, might in regulating his own conduct, have regard to the probable or apprehended conduct of such other persons, and to the presumption that they would act with reasonable caution and not with culpable negligence. . . . The contention on the part of appellant—that it was his duty to stop his train when it did not appear the other would stop, or without knowing it would do so, in the absence of the dangerous proximity of the other—*sets aside the presumption that the law authorized him to indulge*—that the defendant would not be guilty of the culpable negligence of violating the law. *It asserts the doctrine that it was his duty to presume that the other would not do its duty, while the law is he had the right to presume it would.*" (Jacobs' Case, 101 Ala. 149). "The engine had the right of way. It was the duty of the deceased to stop and let the engine pass. It was reasonable to expect him to do so. Can it be said that under the circumstances a human being would *probably* step upon the track in front of a rapidly approaching train in such close proximity? Do the facts authorize the inference that the engineer *ought to have known* that it was *probable* that the deceased would under all the circumstances have been guilty of such perilous and unreasonable conduct?" (Bowers' Case, 110 Ala. 328).

"One has no right to assume, and is not chargeable with reckless indifference to consequences in failing to assume,

that a co-employee, in violation of his duty to keep a lookout for a crane and out of its way, would in any certain instance be and remain in a place of danger; and without such assumption it cannot be said that he acted with a consciousness that the act complained of would ensue." (Anniston Pipe Works v Dickey, 93 Ala. 418; see also Greenwood's Case, 99 Ala. 513).

When one reads the various definitions of wantonness in our decisions and carefully compares the facts and results in the various cases where these definitions have been applied, he is forced to conclude that the safest guide by which to determine whether an act is or is not wanton is the same which the courts, after trying in vain for years to define the police power of the State, finally adopted in determining whether legislation is within that power or not, viz: "the gradual process of judicial inclusion and exclusion," and he is tempted to quote Shaw, C. J., who, in speaking of that hard to be defined and yet ever present power, said: "It is much easier to perceive and realize the existence and sources of the power than to mark its boundaries, or prescribe limits to its exercise."

Indeed, it may be a little irreverent but I believe is not wholly irrelevant to summarize the Alabama decisions on wantonness as Mr. Dooley summarized the opinion (or opinions) of the Supreme Court in the Insular Cases :

"Th' decision was r-read by Brown, J., him bein' th' las' jistice to make up his moind, an' ex officio (as Hogan says) th' first to speak, afther a crool an' bitter contest. Says Brown, J., 'Th' quistion here is wan iv sich gr-great importance that we've bin sthruuglin' over it iver since ye see us las', an' on'y come to a decision (Fuller C. J., Gray J., Harlun J., Shiras J., McKenna J., White J., Brewer J., an' Peckham J. dissentin' fr'm me an' each ither) because iv th' hot weather comin' on. . . . Well, th' decision iv th' coort (th' ithers

dissentin') is as follows: First, that th' Disthric iv Colum-
bya is a State; second, that it is not; third, that New York is
a State; fourth, that it is a crown colony; fifth, that all States
ar-re States an' all Territories ar-re Territories in th' eyes iv
ither powers, but Gawd knows what they ar-re at home!"

THE EFFECT OF SLAVERY UPON THE CONSTITUTIONS AND LAWS OF THE UNITED STATES AND OF THE STATE OF ALABAMA.

BY

EDWARD DEGRAFFENRIED.

An ignorant, badly dressed, poverty stricken negro was recently brought before one of our oldest and ablest Nisi Prius Judges upon a writ of Habeas Corpus. In his petition for the writ, the negro asked for his discharge from imprisonment under an indictment, upon the ground that his imprisonment had become illegal because he had not been accorded a speedy trial. After the argument, the Judge said to me: "Did you ever observe that nearly all of the decisions of our Courts of Last Resort, involving questions of human liberty, have been made in just such cases as the present? That the party creating the litigation is frequently a man of little importance to the community in which he lives?"

This at once suggested to me the Fugitive Slave Law and the Dred Scott Decision, with the consequences thereby entailed upon the American Commonwealth, and I thought it would probably prove of interest, on this occasion, for me to briefly trace the effect that Slavery and its abolition have had upon the Constitution and Laws of the United States, and upon the Constitution and Laws of the State of Alabama.

The first slaves landed in the United States were brought by Spaniards to St. Augustine, Florida, in 1565. At that time

Florida was a Spanish province. The first slaves landed in an English colony, in North America, were brought by a Dutch trader to Jamestown, Virginia, in 1619.

Every civilized man now knows that slavery is wrong; at that time it was treated by every one as unquestionably right. The importation of negro slaves became general and at the breaking out of the Revolution, slavery existed in all of the colonies and was recognized and regulated by law. The establishment of the system in the United States was due to no particular section or set of men. It simply formed a part of the manners and customs of the times, and is traceable to the character of the civilization and education of that day. Its existence in this country was an inheritance from a remote time, which belonged equally to the settlers of Plymouth, the pioneers of Virginia, and the first white men of Louisiana and Florida, and it was continued by these men and their successors as naturally as they continued the other customs and laws which they brought with them from across the sea.

For its maintenance, therefore, and its ultimate abolition, no section of this country deserves special censure or commendation. Its abolition was not caused by any particular men, nor do the people of any particular section deserve special credit for it as an idea originating with them. It was altogether due, as is true of all great political and social movements, to the spirit of the times operating upon a whole people and moving along the lines of least resistance. The gaunt, ungainly figure and kindly face of Lincoln appears prominently in the foreground, but Lincoln was, after all, simply the embodiment, in his time, of this mighty movement, as Washington was, in his day, the living exponent of the hopes and purposes of the founders of the Republic.

The closing decades of the eighteenth century witnessed an almost universal demand for liberty of thought and action.

Lord Mansfield declared, in 1772, for the Realm of England, that no man could be held in bondage. Slavery was abolished in the Austrian Empire in 1782. Moved by the same spirit the people of France, in 1793, shook off their shackles in the bloodiest uprising in human history. Impelled by the same spirit, the American people, in 1776, fought for and at the point of the sword, obtained their freedom and independence. This principle pervaded everything. It appeared in literature, as in Paine's argument for Free Thought; in oratory; in the acts of legislative assemblies, and it continued to influence human thought until the American continent was free. Two Virginia gentlemen, George Washington and Thomas Jefferson, both of whom were large slaveholders, provided for the emancipation of those whom they held as their individual property.

That this force operated peculiarly upon the people of the North is not strange. The negro, a product of the tropics, did not flourish in the low temperature of the North, and there the slave was found to be not very merchantable nor a valuable commodity when bought. On the other hand, the negro slave, in his environment in the South, found himself surrounded by climatic conditions that complied with the demands made by his inherited nature, and there his efficiency was at its height, and his value correspondingly increased.

Out of this situation it came that the people of the North were able to look at slavery as a social and political question from an ethical point of view, unhindered by direct personal interest, and with the evils of the situation magnified by the distance from which they viewed it. The people of the South, being familiar with the practical operation of the system had become too habituated to its existence and the arguments in support of it, to be able to look at the question in the unobscured light of abstract right or wrong. So this moving spirit of liberty that had been, for fifty years, manifesting

itself all over the world, appealed with more force to the people of the North than to those of the South, although it was recognized by both so early as 1774, when the original states, excepting Georgia, in their Articles of Confederation, abolished the slave trade, and by Georgia in 1775, when that State adopted the Articles of Confederation. Later, in 1787, it was recognized by all the original states when, in the adoption of the Constitution of the United States, it was agreed that the slave trade should be continued until 1808, when it should be abolished.

The abolition of slavery, as an accomplished political fact, occurred in all the Eastern original states, during or shortly after the Revolutionary War, leaving it existing in the other original states as it existed in 1860.

The opponents of slavery were undertaking at the same time to restrict its existence to those of the original states in which it continued to flourish, and the first step in this direction was in the ordinance of 1787 organizing the Northwest Territory which afterwards became the State of Ohio, in which it was provided by Article VI: "There shall be neither slavery nor involuntary servitude in the said Territory otherwise than in the punishment of crime whereof the party shall have been duly convicted."

This Ordinance was passed without attracting especial attention and without conflict of note.

The identical situation appeared again, however, thirty-three years later, when the people of Missouri applied for permission to organize a State government. The question at once arose as to whether slavery should be permitted in the new territory. The situation at this time was in every way different from what it had been in 1787. Then, the population of each stage was meagre, manufactures few, and the lands open for settlement apparently unlimited. In 1820, however, the marvelous development of the country was well

under way ; manufactures had sprung up, Whitney had invented the cotton gin, and in the south the cultivation of cotton and tobacco, carried on chiefly by slave labor, had become an important industry and a source of large profit. The slave owner had also developed into a political power. By the representation of the Constitution to three-fifths of the slave population, by which the owner of one hundred slaves in a slave state was equal in political power to sixty free white citizens in a free state, they were developing an influence which some years later became for a time supreme in the nation. The slave states were therefore anxious to extend the limits of the system, while the free states, on the contrary, were determined it should be confined within its original boundaries.

The first occasion for a clash between these adverse interests, rose, as I have said, in the formation of the Territory of Missouri, and the political battle was waged with great vigor by both sides, until Clay, always fertile in political resources, suggested the Missouri Compromise Bill as a solution of the problem. By this Bill, Missouri was organized and slavery permitted therein, while Maine, in which a state government was at the same time established, prohibited it.

The mutual distrust and suspicion which had arisen between the sections did not subside with this settlement of the question. It successively occupied the public mind and engaged the attention of Congress with the application of each territory for permission to organize a state government. Texas, California, Oregon, Kansas and Nebraska, each caused the debate to break out afresh, and in each successive instance with increased acrimony.

Events thus pressed rapidly towards the final arbitrament by the sword, though the efforts of patriotic men on both sides sought to avert such a conclusion. The history of the

forty years that intervened between the passage of the Missouri Compromise Bill and the beginning of the Civil War in which the Missouri Compromise Bill was succeeded by the, Compromise of 1850, the Fugitive Slave Law, the Personal Liberty Laws of some of the Eastern states, the formation of new political parties, the Abolitionist riots in the East and the Dred Scott Decision, is too familiar to repeat in detail. But it is a history, to which, in respect to the men it produced and the great talents for which it formed the background, the American people may well look with pride. Never, except perhaps, in the most strenuous age of British politics, when Burke and Chatham and Pitt and Fox held the center of the stage, has greater ability and greater patriotism been developed in the Anglo Saxon people, and the central figures in that great struggle do not compare unfavorably with their English progenitors.

It is not possible to think of the period without recalling Calhoun, who, from the necessities of the situation and his firm belief in a strict construction of the Constitution, evolved the doctrine of States Rights and maintained it with iron logic; nor of Webster and the patriotism with which he devoted his life to the maintenance, with lofty eloquence, of "An indissoluble Union of indestructible States;" nor of Clay, who possessing neither the relentless reasoning force of Calhoun, nor the impressive power of Webster, was yet able, with the charm of his oratory, "The applause of listening Senates to command."

It is interesting, to digress for a moment, in thinking of this great triumvirate and their associates, to see the diverse views which they held and elaborated prior to 1860, dividing the Supreme Court of the United States in some of their latest and most important judgments. Probably no opinions of the Supreme Court since the War have been of greater importance than those decisions in which they fix the status

of our territory, acquired from Spain, with reference to the Constitution. The same questions arose, the same arguments were made, and the same divergence of views ensued among these great judges in determining the status of Porto Rico and the Philippines, as to whether the Constitution extended of its own force over acquired territory, as exercised the faculties of the Senate in 1850, when California was seeking admission to the Union.

But, notwithstanding all the efforts of the party leaders to reach some common ground upon which both factions could rest in peace, the resort to force was inevitable. The people of the South were as sincere in their opinion that a state had a right to secede from the Union and set up an independent government, as the Northern people were determined that the Union should be preserved. Both were inflexible and war followed.

The immediate result of the surrender at Appomatox was the settlement of political and legal questions that were debatable and had been debated from the beginning. Slavery was abolished and the inability of a State to secede from the Union established.

Then came the Acts of Congress dividing the South into Military Districts, The Freedman's Bureau and Civil Rights Bills, the Reconstruction Acts of 1867-1868, and the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States. The purpose of these Amendments to the Constitution of the United States was to abolish slavery and to secure to the negro the same civil and political rights that belonged to other citizens of the United States.

The effect of the above legislation and constitutional amendments upon the laws of Alabama, was enormous. Ignorance and vice became supreme. A weak, and sometimes venal, judiciary made a mockery of justice. Ig-

norant and corrupt legislation burdened the State and its counties and its municipalities with debt. Business languished and public office fell into the hands of the spoilsman and the plunderer.

Horace Greely, on June 12th, 1871, at the Lincoln Club, inelegantly but truthfully described the situation as follows: "Well gentlemen, 'the thieving Carpet-baggers' are a mournful fact; they do exist there, and I have seen them. They are the fellows who crawled down South in the track of our armies, generally a very safe distance in the rear, some of them on suttlers' wagons, some of them bearing cotton permits, some of them looking sharply to see what might turn up; and they remain there. They at once ingratiated themselves with the blacks—simple, credulous, ignorant men, very glad to welcome and follow any whites who professed to be the champions of their rights. Some of these got elected Senators, others Representatives, some sheriffs, some judges and so on. And there they stand right in the public eye, stealing and plundering, many of them with both arms around negroes and their hands in their rear pockets, seeing if they can not pick a paltry dollar out of them. And the public looks at them; does not regard the honest Northern man, but calls every 'Carpet-bagger' a thief, which is not the truth by a good deal. But these fellows, many of them long faced and with eyes rolled up are greatly concerned for the education of the blacks and for the salvation of their souls. 'Let us pray,' they say. But they spell pray with an e, and thus spelled they obey the apostolic injunction to 'pray without ceasing.' "

This condition existed until 1874 when the effect of the Fifteenth Amendment was nullified by the purchase of the salable negro vote in the white counties, and by counting out the negro vote in the black counties. Through fraud the reign of intelligence was re-established in Alabama, and

through fraud was that reign continued up to the adoption of the present Constitution. While the government thus obtained gave to the State an honest and capable administration of its affairs, it became evident that the fraud by which it was maintained would ultimately sap the foundations of the Commonwealth, destroy our usefulness as a people and our integrity as individuals.

Out of respect to this situation, the last Constitutional Convention was called. Its purpose was to so alter the laws on suffrage as to guarantee honest and efficient government without fraud, and, as was eloquently said by one of its members, "to place ourselves in harmony with the general government under which we live." Enlightened government cannot be maintained where ignorance or vice may go unchallenged to the polls; and, to eliminate that element, it was found necessary to restrict the suffrage after January 1st, 1903, to those of industrious habits who could read and write and to those who, in their own right, or in right of their wives, owned certain property. Excepted from this general provision, under the Temporary Plan, were some citizens, who at the time of the adoption of the Constitution, were entitled to vote, and who, as shown by our past experience, possessed all the character and intelligence necessary to the free exercise of the ballot.

In the State where ignorance largely exists, it is difficult to effect any reform, and the Temporary Plan, was, in fact, but a bridge across which the people of Alabama were led from universal to an intelligent, restricted suffrage; placing the right to vote upon as high a plane as that of any State in the Union; giving to all men who shall qualify themselves for it, the right to vote, and denying to all that right unless they shall meet its requirements. The benefits growing out of the Constitution are even now felt, and as its adoption was due to the determination of the people to maintain hon-

est government through officials selected by honest ballots, the enlightened public sentiment which called it into existence, demands and will secure, its rigid enforcement.

It has been intimated that the State's representation in Congress should be reduced, as provided in the Fourteenth Amendment to the Constitution of the United States, because of this departure from universal suffrage. It should be remembered that the present generation has, as an inheritance, which it has not yet been able to eradicate, and for which it is in no way responsible, a burden of ignorance confined to no race which a restricted suffrage has a broad tendency to overcome, and that honest and efficient government is more difficult where only a part of the population of a state is enlightened, than in a state where the ratio of ignorance is small. It was apprehended that this discussion would take place when the Constitution was being prepared for submission to the people, but it was thought, as was said by a member of the Committee on Suffrage, who is now dead, "that it was better for Alabama to be placed on a territorial representation than for the people of the State to be forced to maintain a reign of intelligence through fraud." It would seem that the State of Alabama in this effort at higher and better things should receive, not the criticisms, but the sympathy and encouragement of the intelligent of all sections and all races.

It will be seen from the above that from the foundation of this government the presence of the negro has been constantly an efficient cause of the making and changing of much of our statute and organic law. And the reason is, that he, and his condition formed the obstacle that the inevitable progress of this country was bound to overcome. As has been said by a brilliant Alabamian: "It was all the Past that went with Pickett up the slope of Gettysburg, and all the Future that met him on the heights." And so that evolution, that

progress of the race by which each decade leaves us stronger, better and more enlightened than the last, found in the negro and his bondage, the salient weakness, the point of attack, in which it being at last victorious, the whole Nation stands more firmly rooted in liberty, in law, in harmony with eternal principles and in all that goes to make a people great and strong.

AN ACT

To amend Sections 598, 599, 600, 601, 603, 605, 606 and 610 of the Code of Alabama. Be it enacted by the Legislature of Alabama :

SECTION 1. That Section 598 of the Code of Alabama be, and the same is hereby amended so as read as follows: The Alabama State Bar Association, or the Central Council thereof, has authority to institute and prosecute, or cause to be instituted and prosecuted, in the name of the State of Alabama, the proceedings herein prescribed for the suspension or removal of an attorney.

SEC. 2. That Section 599 of said Code be, and the same is hereby amended so as to read as follows: The accusation must be in writing, and when the prosecution is instituted by the Alabama State Bar Association, or the Central Council thereof, a written statement signed by the President of said Association, or the Chairman of said Council, and attested by the Secretary of said Association, accompanied by written affidavit of any person or persons making charges for suspension or removal of such attorney, if any, taken before any officer authorized by law to administer oaths within or out of the State, setting forth the facts upon which the same may be based, shall be delivered by the Secretary of said Association to the Solicitor of the Circuit in which such attorney resides and thereupon, or when the proceeding is taken by the Court of its own motion, the Solicitor of said Circuit shall draw up such accusation, citing the accused to appear before said Circuit Court, or City court, or court of like jurisdiction, on a day named therein, and moving the court for the suspension

or removal of such attorney, and have the same served by the sheriff of the county of such attorney's residence, by leaving a copy thereof with the accused.

SEC. 3. That Section 600 of said Code be, and the same is hereby amended so as to read as follows: If the proceedings are upon the information of an individual, the accusation must be in writing, setting forth the facts upon which the charges are based, verified by the oath of such individual, or some other person, taken before any officer authorized by law to administer oaths in or out of the State, that such facts are true, and must be presented to and filed in said Circuit Court, or City Court, or court of like jurisdiction, accompanied by security for costs to be approved by the Judge thereof.

SEC. 4. That Section 601 of said Code be, and the same is hereby amended so as to read as follows: When the accusation is made by an individual the Circuit Court, or City Court or court of like jurisdiction, must if of opinion that the accusation would, if true, furnish grounds of suspension or removal of such attorney, make an order requiring the accused to appear and answer the same at a specified day during that, or the next term, or at any other time, when the court can hear and determine the same, a copy of which, together with a copy of the accusation, must be served upon the accused; provided, that if such order is made, or proceedings are instituted by the court of its own motion, or as provided by Section 2 of this Act ten days before any term of the court, or before the adjournment thereof, such accusation must be made returnable and be heard during said term, unless continued for good cause by the court, upon such terms as it may impose.

SEC. 5. That Section 603 of said Code be, and the same is hereby amended so as to read as follows: The accused may answer such accusation, either by objecting in writing to the

sufficiency thereof, or by denying the truth of the facts alleged or setting forth the facts of his defense, which said answer as to facts, by denial or otherwise, must be in writing, signed by the accused and verified by his oath, and the accusation, objections and answer in said proceedings are hereby made of record therein as in other civil suits or proceedings in said court.

SEC. 6. That Section 605 of said Code be, and the same is hereby, amended so as to read as follows: If the accused pleads guilty, or fails or refuses to answer the accusation, the court must proceed to judgment of suspension or removal: if he answer the accusation, the court must immediately, or at such time as it may appoint, proceed to try the same, either side having the right to demand a trial by jury; if no jury is demanded, the court in trying the same shall make and file a statement of the facts established by the evidence, and if a jury is demanded, the jury must make a special finding of the facts, upon issues of facts submitted by the court, and upon such statement of facts by the court, or special finding of facts by the jury, the court must render judgment of acquittal or suspension, or removal, of the accused, as such facts may warrant; provided, however that such accused attorney may stop or prevent such prosecution by a surrender of his license as an attorney in all the courts of the State of Alabama, a record of which surrender shall be made in the Supreme Court of said State.

SEC. 7. That Section 606 of said Code be, and the same is hereby, amended so as to read as follows: The proceedings when instituted by the court of its own motion, or when the written statement hereinbefore provided for has been presented by the Alabama State Bar Association, or its Central-Council, to the Solicitor of the Circuit, in which the accused resides, must be conducted in the name of the State, and when on the information of an individual in the name of

the state upon the information of such person; and in all cases the Solicitor of said Circuit shall appear and sustain such accusation, and be responsible for the faithful performance thereof as of other official duties required of him by law; provided, however, that the Court may, upon the motion of said Solicitor, and upon good cause shown, at any time require said The Alabama State Bar Association to give security for the costs of such proceedings to be approved by the Court within ten days from notice to the Secretary of said Association, by said Solicitor, and the hearing of said cause shall be postponed for that time, unless such security shall be sooner given.

SEC. 8. That Section 610 of said Code be, and the same is hereby, amended so that the same shall read as follows: Either party may appeal to the Supreme Court from any adverse judgment rendered by said Circuit Court, City Court, or court of like jurisdiction, in said proceeding, at any time within thirty days after such judgment, in the manner now prescribed by law for appeals in civil cases, and may reserve by bill of exceptions any question proper to be reserved in civil causes and the judgment rendered in said proceeding, and the Supreme Court may affirm, modify or reverse such judgment, or render such judgment in such proceeding as the Circuit Court, City Court, or court of like jurisdiction, should have rendered.

SEC. 9. Whenever any disagreement or controversy arises between an attorney at law and any other person, respecting the amount of the compensation to which he is entitled by contract or otherwise, and his retention of the same out of any funds in his hands, such attorney may by motion in the Circuit Court, City Court, or court of like jurisdiction, of the County of his residence of which such other person shall have notice, obtain an order of said court that a certain amount is due him under such contract, or would be reason-

able compensation for his services, and when such motion is made and order obtained, such attorney shall not be subject to prosecution, suspension or removal under this act, or other penalty therefor; but nothing herein contained shall affect or destroy any civil action to which any person would be entitled against such attorney respecting the same or any criminal prosecution to which the accused would be otherwise liable.

SEC. 10. All laws and parts of laws in conflict with this act are hereby repealed.

Approved Oct 3, 1903.

MEMORIALS

JOHN H. CALDWELL.

John H. Caldwell was born at Huntsville, Alabama, April 4, 1826, of Scotch-Irish parentage. He was educated at Bacon College, Kentucky, and at the age of nineteen years began teaching school in Limestone county, this State. At the age of twenty he was married to Mary S. Greer, of Fayetteville, Tennessee. Being thrown upon his own resources because of certain heavy losses occasioned by the great fire which occurred at Huntsville in the forties, he continued to teach school for a livelihood, meanwhile devoting his spare time to the study of the law. In 1856 he was admitted to the bar and soon thereafter was elected by the Legislature to the office of solicitor of his judicial circuit, which office he held until he enlisted in the Confederate army. Entering the service as Captain of the Ashville Guards, a company which he organized in St. Clair county, he was steadily promoted until, at the close of the struggle, he was the Colonel of the 10th Alabama. With such skill and bravery did he command this regiment in many important engagements that he was complimented for gallantry by the General in command, and his name is mentioned with praise in the history of the war published by the United States government. After the close of hostilities he was again elected to the office of solicitor and re-elected in 1866, but was deposed by military order during reconstruction times for "disobedience." In 1872 he was elected to Congress as a democrat

and was re-elected in 1874, retiring at the end of his second term. In 1878 he became the agent of the State of Alabama to recover from the government of the United States certain lands known as "School Indemnity Lands," and after years of persistent effort overcame all obstacles and succeeded in securing and having certified to the State large bodies of these lands, some of them being rich in mineral deposits. In 1896-7 he was appointed by Governor Johnston to the Board of Trustees of the University of Alabama, the duties of which position he discharged to the time of his death, with characteristic fidelity and devotion to duty, sometimes attending the meetings of the board despite forbidding feebleness of health. His high integrity, eminent ability and exalted patriotism made him a most useful and influential member of this board of distinguished men.

Colonel Caldwell was a strong man upon the stump and in the court room. His manner of speech was at all times chaste, earnest and convincing. His attractive presence and pleasing expression, his knowledge of men and the things that move them to action, combined with the power of analyzing and presenting his subject to the best advantage, made him well nigh invincible as a debator and resistless as an advocate. He was no time server. His caution was exercised in choosing the right and from the right he could not be swayed by any consideration personal to himself. Honest, able and fearless, yet amiable, modest and gentle, his life was most exemplary in every respect. In the family circle he found sweetest pleasure; in Christianity most serene satisfaction. He died at his home in Jacksonville, Alabama, on the 4th day of September, 1902, leaving surviving him the wife of his youth, and two sons, Ed. G. Caldwell of Jacksonville and John M. Caldwell of Birmingham.

W. L. MARTIN.

TENNENT LOMAX.

Since the last annual meeting of this Association, our friend and brother Tennent Lomax—in the noontide of life,—loved and honored, has been called to that Great High Court.

In attempting to give some expression to the affectionate regard entertained for Tennent Lomax, we are fully conscious of the inadequacy of mere words in time of deep bereavement, to voice the sentiment of the heart and speak the language of sorrow.

But we shall refrain from writing any reckless eulogy over the friend we knew and loved so well. His life does not require it. His heroic death, with all of its solemnity of Spartan fortitude, would be belittled by such words.

In the hearts of those who loved him, his was a life which begged praise, but what such of these felt and feel for him would seem to others the same post mortem exaggeration of laudation of which the world has heard so much from the earliest days to our own times.

But the wise man knows that nothing more eloquent; nothing more of praise can be said of any man than that "He did his duty." Bloody victories of ruthless conquerors have made them famous in the minds of those whom the burnished brass of infamy is taken for the pure gold of true nobility, but duty well performed is the only thing which deserves true fame among men, as it will be our only refuge and plea before the Great White Throne of God in the day of judgment.

On the monument of Tennent Lomax should be inscribed the simple epitaph, "He did his duty." The performance of that duty was the polestar of his life, and it lightened his soul when the Master called it back to Him through the dark shadows of death,

Such was his nature and such was his inheritance. When

his gallant father fell while in command of the 3rd Alabama Regiment on the bloody battle field of Seven Pines—duty led him to that death, and he went to meet his Creator with the same spotless record of duty well done, as did his son.

Tennent Lomax was born in the City of Montgomery, April 25th, 1858. Then it was that the South was free from any sordid thirst for wealth. It was then that men loved honor more than riches, and the whole brave manhood of the South was bracing itself to do its duty—its perilous but magnificent duty,—towards country and home. Dark and terrible were the years to follow, and the very atmosphere of the South throbbed with patriotism and thrilled with the fixed determination of duty to her and her people. A child born at such a time and of such parentage could not have failed with its first breath to have inhaled a fervid patriotism and a stern devotion to duty which ever after characterized the life of Tennent Lomax.

Early in life he selected the law as his life calling. His educational training, begun in the schools of Montgomery, was completed in the Academic Department of the University of Alabama, with the class of 1878, and in the Law Department of the same institution in the following year. At the University he won high honors and obtained the first prize for original oratory; and here it may be said with perfect truth, that he had no superior in Alabama as a genuine master of eloquence. He was an orator born, not made. He was a gifted and pleasing speaker. There was nothing of studied oratory in him. With a fine presence he combined a strong, well-modulated voice and grace of diction. His gestures were easy and natural. He had an extensive vocabulary and spoke with fluency and ease. He possessed the power of clear and cogent statement, and carried his argument home to his hearers with trenchant force.

While he clothed his thoughts for the most part in plain, strong Anglo-Saxon origin, his broad culture enabled him upon occasion to embellish them with the beauty of classical literature and the grace of poetry. His manner at all times was courteous and affable.

Almost immediately after his return from the University of Alabama (in 1879), he began the practice of law in the City of Montgomery, and soon afterwards (in 1880), the then Circuit Solicitor, Hon. Fred. S. Ferguson, recognizing the peculiar fitness of Lomax, his eloquence and integrity, secured him as his assistant. This position he held from 1880 to 1886. In 1886 he was elected Solicitor of Montgomery County, which position he held until his death.

From the very first he became the terror of wrong doers and the hope of the law-abiding in his community. His keen insight into the character of men, his brilliant mind and his unbounded energy peculiarly fitted him for the position, and won for him the reputation of being perhaps the best prosecuting lawyer in Alabama. A few lawyers occasionally attempted to displace him, but the hope of such a thing was idle.

That which Lomax wished, the people would have granted him, and one of the most remarkable things in his unique career was the fact that he knew no friend or enemy in his official life. Whenever some personal friend was called before the Court, he prosecuted him with the same vigor with which he prosecuted others. Yet this left no sting behind, for his absolute fairness was obvious, and his sense of duty was apparent. He was vigorous and firm, quick at repartee—yet one

"Whose wit in the combat, as gentle as bright,
Ne'er carried a heart-stain away on its blade."

But it must not be supposed from what is written that

Lomax was of a cold, self-centered disposition. In his social life, his kindly courtesy warmed the hearts of all who knew him, but he was not known as a "society man." The idle fripperies of that nebulous thing palled on his early life; they were inconsistent with, and repugnant to, his high ideals and his honorable ambitions; yet he was always a kindly man, moving among his kind with no pretense of superiority or exclusiveness.

His devotion to his Alma Mater,—the University of Alabama,—was remarkable. For several years he was a member of its Board of Trustees, and the result of his efforts in behalf of that institution while a member of the late Constitutional Convention will ever stand as an enduring monument to his loyalty to that institution.

Mr. Lomax was prominent as a member of the Knights of Pythias. He served in all of the chairs of the Grand Lodge of the Domain of Alabama, and was in 1896 chosen Chancellor-Commander of the State, and was Supreme Representative of the Grand Lodge of Alabama in the Supreme Lodge Knights of Pythias; and but for his untimely death, he would doubtless have been elected at the last meeting of the Supreme Lodge, Supreme Vice Chancellor.

As to his home life:—His affectionate heart poured out its treasures of love and duty towards his noble, devoted, widowed mother. No exaggeration can be indulged in here. For her,—to comfort and cherish her,—he gave up many ambitions. As has been said, and as all know, the people would have eagerly given him almost any political gift in their power, but he refrained. To have accepted the highest would have been to deprive the dearly beloved mother of his constant care and service. So he lived and died, honored by all who knew him. It is needless to say more.

A fervent, unswerving worshipper at the shrine of duty and filial love, his superior in this respect never lived.

His life was an inspiration. He loved the world, but feared not to leave it. His companionship was ennobling. By his death we are reminded of the mutability of human life, and the incompleteness of human ambitions.

A high-born soul,—one who loved his fellow-men,—has passed to its royal heritage.

B. P. CRUM.

CONSTITUTION.

ARTICLE I.

The object of the Association shall be to advance the science of jurisprudence, promote the administration of justice throughout the State, uphold the honor of the profession of the law, and establish cordial intercourse among the members of the Bar of Alabama. This Association shall be known as "The Alabama State Bar Association."

ARTICLE II.

Any person shall be eligible to membership in this Association who shall be a member of the Bar of the State in good standing, and who shall also be nominated as hereinafter provided.

ARTICLE III.

The officers of this Association shall consist of one President, five Vice-Presidents, a Secretary, a Treasurer, a Central Council, and an Executive Committee, which committee shall be composed of five members, one of whom shall be the Secretary and Treasurer of the Association.

Each of these officers, council and committee, shall be elected at each annual meeting by the Association for the year next ensuing, but the same person shall not be elected President two years in succession. All such elections shall be by ballot. The officers elected shall hold office until their successors are elected and qualified according to the Constitution and By-Laws.

ARTICLE IV.

The Central Council shall consist of five members, and shall be at all times an advisory board for consultation and conference when called on for that purpose by the President or any Vice President who may for the time being be acting as President.

ARTICLE V.

The President, by and with the advice and consent of the Central Council, may establish a Local Council in any county of this State by issuing a warrant to that effect, naming therein the persons composing such Local Council. Each Local Council shall consist of not less than three nor more than seven members. No person shall be eligible to appointment as a member of any Local Council who is not at the time a member of this Association.

ARTICLE VI.

The Central Council and Local Councils shall have full power to nominate applicants to become members of this Association.

ARTICLE VII.

Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge. One year's annual dues shall be paid in advance by each member at the time of his election.

ARTICLE VIII.

By-Laws may be adopted at any annual meeting of the Association by a majority of the members present.

ARTICLE IX.

The following committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each.

1. On Jurisprudence and Law Reform.
2. On Judicial Administration and Remedial Procedure.
3. On Legal Education and Admission to the Bar.
4. On Publication.
5. On Grievances.
6. On Correspondence.
7. On Legislation.
8. On Local Bar Associations.

A majority of the members of any committee, or of the Central Council who may be present at any meeting of such committee or council, shall constitute a quorum for the purposes of such meeting. Vacancies in any office provided for by this Constitution shall be filled by appointment by the President, and the appointees shall hold office until the next meeting of the Association.

ARTICLE X.

The Central Council and Executive Committee shall each perform such duties as may be assigned to them by the President, or as may be defined by the By-Laws, except as herein otherwise directed.

ARTICLE XI.

This Association shall meet annually at such time and place

as the Executive Committee may determine, and those present at such meeting shall constitute a quorum. The Executive Committee shall require thirty days' notice of the time and place of meeting, by publication in a newspaper, to be given; which publication shall be made by the Secretary.

ARTICLE XII.

The President shall open each annual meeting of the Association with an address in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several States and by Congress during the preceding year.

ARTICLE XIII.

The Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than thirty members are present.

ARTICLE XIV.

Each Local Council shall perform such duties as it may be called upon to perform by the President, or as may be defined by the By-Laws.

ARTICLE XV.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association or in his profession, on conviction thereof, as may be prescribed by the By-Laws.

ARTICLE XVI.

The Constitution shall go into immediate effect. This Association shall be incorporated under the laws of the State of

Alabama as soon as practicable, and until such incorporation all money and property of said Association shall be vested in the President and Treasurer, as trustees thereof, who shall pay over and deliver the same to said corporation as its property as soon as the corporation is created by law.

ARTICLE XVII.

The two offices of Secretary and Treasurer may be filled by one person, if the Association shall, by its By-Laws, so determine.

BY-LAWS.

I.

The President shall preside at all meetings of the Association, and in case of his absence one of the Vice-Presidents shall preside.

II.

The Secretary shall keep a record of all meetings of the Association, and all other matters of which a record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association with the concurrence of the President. He shall notify the officers and members of their election, and shall keep a roll of the members, and shall issue notices of all meetings.

III.

The Treasurer shall collect, and, under the direction of the Executive Committee, disburse all funds of the Association; he shall report annually, and oftener if required; he shall keep regular accounts, which shall be at all times open to inspection of the members of the Association. His accounts shall be audited by the Executive Committee. Before discharging any of the duties of his office, the incumbent shall execute a bond with good and sufficient surety, to be approved by the President, payable to the President and his successors in office, in the sum of five thousand dollars, for the use of the Association and conditioned that he will well and faithfully perform the duties of his office so long as he discharges any of the duties thereof.

IV.

The Executive Committee shall meet at least once a month, except in July, August and September. They shall have power to make such regulations, not inconsistent with the Constitution and By-Laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of their proceedings, which shall be read at the ensuing meeting of the Association; and it shall be their duty to present business for the Association. They shall have no power to make the Association liable for any debts amounting to more than half the amount in the Treasurer's hands in cash, and not subject to prior liabilities. They shall perform such other duties as are required of them by the Constitution, or as may be assigned to them by the President.

V.

The Central Council shall perform all such duties as may be required of them by the Constitution or as are assigned to them by the President, but they shall not be required to keep a record of their proceedings, nor shall they make any report to any meeting of the Association, unless such report is required by the Association, and then only as to the particulars about which they are required to report; and the provisions of this section shall apply also to Local Councils.

VI.

At each annual, stated or adjourned meeting of the Association the order of business shall be as follows :

1. Reading of minutes of preceding meeting.
2. Address of the President.
3. Report of the Treasurer.

4. Report of the Executive Committee.
5. Elections, if any, to membership.
6. Reports of Standing Committees.
7. Reports of Special Committees.
8. Election of Officers and Appointment of Committees.
9. Miscellaneous business.

This order of business may be changed by a vote of the majority of the members present.

The parliamentary rules and orders contained in Cushing's Manual, except as otherwise herein provided, shall govern all meetings of the Association.

VII.

If any person elected does not, within one month after notice of his election, signify his acceptance of membership by a letter to the Secretary to that effect, and by payment of his admission fee, he shall be deemed to have declined to become a member.

VIII.

In pursuance of Article IX of the Constitution, there shall be the following Standing Committees :

1.—A Committee on Jurisprudence and Law Reform, who shall be charged with the duty of attention to all proposed changes in the law, and of recommending such as in their opinion may be entitled to the favorable consideration of the Association.

2.—A Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the working of our judicial system, the collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending, from time to time, to the Association such action as they may deem expedient.

3.—A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what change it is expedient to propose in the system and mode of legal education, and of admission to the practice of the profession in the State of Alabama.

4.—A Committee on Publication, who shall be charged with the duty of examining and reporting, when so required by the Association, upon matters proposed to be published by its authority.

5.—A Committee on Grievances who shall be charged with the hearing of all complaints that may be made in matters affecting the interest of the legal profession and the practice of law, and the administration of justice, and to report the same to this Association, with such recommendations as they may deem advisable; and said committee shall, in behalf of the Association, institute and carry on such proceedings against offenders, and to such an extent as the Association may order, the cost of such proceeding to be paid by the Executive Committee out of moneys subject to be appropriated by them.

6.—A Committee on Correspondence, who shall be charged with the duty of corresponding with the officers and committees of other Bar Associations for the purpose of causing action relative to law questions of national importance.

7.—A Committee on Legislation, who shall be charged with the duty of ascertaining and reporting to each meeting of the Bar Association such legislation as it may approve of and consider necessary and proper to carry into effect the suggestions contained in the reports of the various committees, and papers read at any previous meeting, and it shall be the duty of said committee to prepare, at the expense of this Association, and cause to be printed and distributed by the Secretary to the members of the Association, at least thirty days before each annual meeting, in the form of bills or resolutions, all

of such measures as may be reported by it for their consideration, together with the report of the committee.

All reports submitted to the Association recommending changes in the statutory law, or amendments the cto, shall be accompanied by bills or joint resolutions in the form to be presented to the General Assembly for enactment

8.—A Committee on Local Bar Associations, who shall be charged with the duty of encouraging the organization and maintenance of local Bar Associations throughout the State, and their affiliation with this Association.

9.—A special committee of three members, to be known as the Committee on Legislative Enactment, shall be appointed by the President at the meeting next before each session of the General Assembly, which shall be continued until the annual meeting after the next session of the General Assembly, and it shall be the duty of said committee to present to the General Assembly in form of a memorial, all such bills and joint resolutions, the enactment of which has been recommended by this Association. Before the meeting of the General Assembly, a copy thereof shall be sent by mail to the Secretary of this Association, to each member of the General Assembly, at least thirty days before its meeting, and as soon as it is organized, the Secretary shall place a copy thereof on the desk of each member. Such memorial shall contain a copy of each bill and joint resolution, as approved by this Association, and the reasons for their adoption, as shown by this Association, and such additional argument as it may deem necessary. And it shall be the duty of the committee to take all such steps as they may deem proper to insure the enactment of such bills and joint resolutions. The expenses incurred by the committee shall be paid out of the funds of the Association. It shall be the duty of this committee to report to the meeting of the Association next after the meeting of the General Assembly,

and accompany their report with a copy of the memorial, which they shall have submitted to the General Assembly.

IX.

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of this Association, and shall continue in office until the annual meeting of the Association next after their appointment, and until their successors are appointed, with power to adopt rules for their own government not inconsistent with the Constitution or these By-Laws. Any standing committees of the Association may, by rule, provide that three successive absences from the meetings of the committee, unexcused, shall be deemed a resignation of the members so absent, of his place upon the committee. Any standing committee of the Association may, by rule, impose upon its members a fine for non-attendance, and may provide for the disposition of the fines collected under such rule.

X.

Whenever any complaint shall be preferred against a member of the Association for misconduct in his relations to this Association, or in his profession, the member or members preferring such complaint shall present it to the Committee on Grievances in writing, and subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The committee shall, thereupon, examine the complaint, and if they are of opinion that the matters therein alleged are of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than five days of the time and place when the committee will meet for the consideration thereof, to be served on the member complained of, either personally, or by leaving the same at his place of business dur-

ing office hours, properly addressed to him. If after hearing his explanation the committee shall deem it proper that there should be a trial of the charge, they shall cause a similar notice of five days of the time and place of trial to be served on the party complained of.

The committee shall be furnished with a list of the witnesses, their names and places of residence, who it is proposed shall be examined to sustain the charge which shall accompany the complaint when made to the committee; and when the day is set for trial the member complained of, upon his demand therefor, shall be entitled to a copy of said list of witnesses. At the time and place appointed for the trial, or at such other time as may be granted by the committee, the member complained of shall file a written answer or defense; and should he fail to do so, the committee may proceed thereupon to the consideration of the complaint.

The committee shall thereupon and at such other times and places as they may adjourn to, proceed to hear the evidence adduced and try the complaint, and shall determine all questions of evidence.

The complainant and the member complained of shall each be allowed to appear personally and by counsel who must be members of the Association; and the complainant and the member complained of shall each be competent witnesses. The witnesses shall vouch for the truth of their statements on their word of honor. The committee shall have power to summon witnesses, and if any of such witnesses are members of the Association, a neglect or refusal to appear may be reported to the Association by the committee and treated as misconduct.

The committee, of whom at least four must be present at the trial, except that a less number may adjourn from time to time, shall hear and decide the allegations submitted to them; and if they find the complaint or any material part of

it to be true, they shall so report to the Association, with their recommendation as to the action to be taken thereon.

The decision of the committee shall be served on the member complained of; and if the decision be that the complaint or any material part thereof is true, and in that case only, the committee shall also serve a copy of the complaint, answer, if there be an answer, and decision on the President of the Association; and if requested either by the member or members complaining, or the member complained of, shall annex thereto a copy of the evidence taken, which said document shall be regarded as a report of the committee to the Association.

Every such report shall be acted on only by the Association at an annual, stated or adjourned meeting of the Association and of which the member complained of shall have due notice, to be served upon him by direction of the committee. The Association shall thereupon proceed to take such action on said report as they may see fit, provided only that no member shall be expelled, unless by the vote of two-thirds of the members present and voting.

Whenever any trial shall be determined on, the member complained of may object for cause to any of the members of said committee, which causes he shall state in writing and present to the committee, thereupon the committee shall report the facts to the President, and enclose to him a copy of the objections for cause; and the President shall forthwith summon the Central Council to meet with him and determine what weight, if any, the objections for cause are justly entitled to have, and if the President and a majority of the Central Council present and voting, shall determine that the objections for cause are not well taken, and that the same are overruled, the President shall so inform the Committee on Grievances, but if the President and a majority of the Central Council as aforesaid shall determine that any of said objections for cause to any member of the Committee on Grievances are well taken,

then the President shall so inform said committee, and forthwith appoint another member or members to supply the temporary vacancy caused thereby; and the method herein provided shall be resorted to until a committee is obtained against whom the member complained of urges no just objection for cause.

All the foregoing proceedings shall be kept secret, except as their publication is hereinbefore provided for, unless otherwise ordered by the Association.

DISBARMENTS.

Whenever a complaint in writing shall be made to the Central Council of the Association, or to any member of the Council, charging any practicing attorney in this State with any act or omission for which attorneys may by law be disbarred, it shall be the duty of the Central Council to consider the complaint, and if said council have reasonable ground to believe the complaint is true, it shall be the duty of said council to appoint a member of this Association, with instructions to prosecute the attorney charged, in the name of this Association, for the act or omission charged. And if the attorney so appointed and instructed, fail or refuse, without good excuse, to prosecute the party charged, the attorney so appointed shall be expelled from the Association. And the Central Council shall report all failures to prosecute. And, in case of failure or refusal of any attorney so appointed to act, it shall be the duty of said council to appoint and instruct some other member of this Association to prosecute the party charged.

XI.

Nominations of candidates to fill the respective offices may be made at the time of the election by any member, and as many candidates may be nominated for each office as mem-

bers may wish to name, but all elections, whether to office or membership must be by ballot. A majority of the votes cast shall be sufficient to elect to office; but five negative votes shall be sufficient to defeat an election to membership.

XII

All vacancies in any office or committee of this Association shall be filled by appointment of the President, and the persons thus appointed shall hold for the unexpired term of his predecessor; but if a vacancy occur in the office of President, it shall be filled by the Association at its first stated meeting occurring more than ten days after the happening of such vacancy and the person elected shall hold office for the unexpired term of his predecessor.

XIII

Every member of this Association shall pay his annual dues to the Treasurer on the first day of March in each year, and no person shall be qualified to exercise any right or privilege of membership who is in default in that respect for a period of sixty days after that time; *provided, however*, that at any time before the next meeting of the Association thereafter such person may be restored to membership by order of the Executive Committee, and upon his having then paid his annual dues to the Treasurer; and all persons who have ceased to be members of this Association by reason of failure to pay their annual dues will no longer be borne upon the roll as members thereof by the Secretary and Treasurer.

XIV.

These By-Laws may be amended at any stated, adjourned or annual meeting of the Association by a majority vote of those present.

XV.

Any officer may resign at any time upon settling his accounts with the Association. A member may resign at any time upon the payment of all dues to the Association; and from the date of the receipt by the Secretary of a notice of resignation with an endorsement thereon by the Treasurer that all dues have been paid as above provided, the person giving such notice shall cease to be a member of the Association.

XVI.

The offices of Secretary and Treasurer shall be filled by the Secretary, and his annual salary shall be three hundred dollars one-half of which shall be due on the first day of May, and the other half on the first day of November in each year, but may be paid earlier or at any other times if the Executive Committee shall, in writing, so direct; but this shall be in full of all compensation to him. No other officer of the Association shall receive any salary or compensation.

XVII.

The Association shall have its annual meeting at such time and place as the Executive Committee may determine, and continue in session until all the business before it is disposed of. If the President and Central Council shall determine that it is necessary for said Association to hold any other meetings during any year, the same shall be held at such time and place as the Central Council may fix, and upon twenty days' notice of such time and place to be given by the Secretary, by publication in a public newspaper, and the Secretary shall give this notice upon the order of the President.

CODE OF ETHICS.

The purity and efficiency of judicial administration, which under our system, is largely governmental itself, depend as much upon the character, conduct, and demeanor of attorneys in this great trust, as upon the fidelity and learning of courts, or the honesty and intelligence of juries.

"There is perhaps no profession after that of the sacred ministry, in which a high toned morality is more imperatively necessary than that of the law. There is certainly without any exception, no profession in which so many temptations beset the path to swerve from the lines of strict integrity; in which so many delicate and difficult questions of duty are constantly arising. There are pitfalls and mantraps at every step, and the mere youth, at the very outset of his career, needs often the prudence and self-denial, as well as the moral courage, which belongs commonly to riper years. High moral principle is the only safe guide; the only torch to light his way amidst darkness and abstrusion."—*Sharswood*.

A comprehensive summary of the duties specifically enjoined by law upon attorneys, which they are sworn "not to violate," is found in section 791 of the Code of Alabama.

These duties are :

"First—To support the Constitution and laws of this State and the United States.

"Second—To maintain the respect due to courts of justice and judicial officers.

"Third—To employ for the purpose of maintaining the causes confided to them, such means only as are consistent with truth, and never seek to mislead the judges by any artifice or false statement of the law.

"Fourth—To maintain inviolate the confidence, and at every peril to themselves, to preserve the secrets of their clients.

"Fifth—To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or a witness, unless required by the justice of the cause with which they are charged.

"Sixth—To encourage neither the commencement nor continuance of an action proceeding from any motive of passion or interest.

"Seventh.—Never to reject, for any consideration personal to themselves, the cause of the defenseless and oppressed."

No rule will determine an attorney's duty in the varying phases of every case. What is right and proper must, in the absence of statutory rules and an authoritative code, be ascertained in view of the peculiar facts, in the light of conscience, and the conduct of honorable and distinguished attorneys in similar cases, and by analogy to the duties enjoined by statute, and the rules of good neighborhood.

The following general rules are adopted by the Alabama State Bar Association for the guidance of its members :

Duties of Attorneys to Courts and Judicial Officers.

1.—The respect enjoined by law for courts and judicial officers is exacted for the sake of the office, and not for the individual who administers it. Bad opinion of the incumbent, however well founded, can not excuse the withholding of the respect due the office, while administering its functions.

2.—The proprieties of the judicial station, in a great measure, disable the judge from defending himself against strictures upon his official conduct. For this reason, and because such criticisms tend to impair public confidence in the administration of justice, attorneys should, as a rule, refrain from published criticism of judicial conduct, especially in reference

to causes in which they have been of counsel, otherwise than in courts of review, or when the conduct of a judge is necessarily involved in determining his removal from or continuance in office.

3.—Marked attention and unusual hospitality to a judge, when the relation of the parties are such that they would not otherwise be extended, subject both judge and attorneys to misconstructions, and should be sedulously avoided. A self-respecting independence in the discharge of the attorney's duties, which at the same time does not withhold the courtesy and respect due the judge's station, is the only just foundation for cordial personal and official relations between bench and bar. All attempts by means beyond these to gain special personal consideration and favor of a judge are disreputable.

4.—Courts and judicial officers, in their rightful exercise of their functions, should always receive the support and countenance of attorneys against unjust criticism and popular clamor; and it is an attorney's duty to give them his moral support in all proper ways, and particularly by setting a good example in his own person of obedience to law.

5.—The utmost candor and fairness should characterize the dealings of attorneys with the courts and with each other. Knowingly citing as authority an overruled case, or treating a repealed statute as in existence—knowingly misquoting the language of a decision or text-book—knowingly misquoting the contents of a paper, the testimony of a witness, or the language or argument of opposite counsel—offering evidence which it is known the court must reject as illegal, to get it before the jury, under the guise of arguing its admissibility—and all kindred practices—are deceits and evasions unworthy of attorneys.

Purposely concealing or withholding in the opening argument, positions intended finally to be relied on, in order that

opposite counsel may not discuss them, is unprofessional. Courts and juries look with disfavor on such practices, and are quick to suspect the weakness of the cause which has need to resort to them.

In the argument of demurrers, admission of evidence, and other questions of law, counsel should carefully refrain from "side-bar" remarks and sparring discourse, to influence the jury or bystanders. Personal colloquies between counsel tend to delay, and promote, unseemly wrangling, and ought to be discouraged.

6.—Attorneys owe to the courts and the public whose business the courts transact, as well as to their own clients, to be punctual in attendance on their causes; and whenever an attorney is late he should apologize or explain his absence.

7.—One side must always lose the cause; and it is not wise, or respectful to the court, for attorneys to display temper because of an adverse ruling.

Duties of Attorneys to Each Other, to Clients and the Public.

8.—An attorney should strive at all times, to uphold the honor, maintain the dignity, and promote the usefulness of the profession; for it is so interwoven with the administration of justice that whatever redounds to the good of one advances the other; and the attorney thus discharges, not merely an obligation to his brothers, but a high duty to the State and his fellow-man.

9.—An attorney should not speak slightly or disparagingly of his profession, or pander in any way to unjust popular prejudices against it; and he should scrupulously refrain at all times, and in all relations of life, from availing himself of any prejudice or popular misconception against lawyers, in order to carry a point against a brother attorney.

10.—Nothing has been more potential in creating and pandering to popular prejudice against lawyers as a class, and in withholding from the profession the full measure of public esteem and confidence which belong to the proper discharge of its duties, than the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is an attorney's duty to do everything to succeed in his client's cause.

An attorney "owes entire devotion to the interest of his client, warm zeal in the maintenance and defense of his cause, and the exertion of the utmost skill and ability," to the end that nothing may be taken or withheld from him, save by the rules of law, legally applied. No sacrifice or peril, even to loss of life itself can absolve from the fearless discharge of this duty. Nevertheless, it is steadfastly to be borne in mind that the great trust is to be performed within and not without the bounds of the law which creates it. The attorney's office does not destroy man's accountability to the Creator, or loosen the duty of obedience to law, and the obligation to his neighbor; and it does not permit, much less demand, violation of law, or any manner of fraud or chicanery, for the client's sake.

11.—Attorneys should fearlessly expose before the proper tribunals corrupt or dishonest conduct in the profession; and there should never be any hesitancy in accepting employment against an attorney who has wronged his client.

12.—An attorney appearing or continuing as private counsel in the prosecution for a crime of which he believes the accused innocent, forswears himself. The State's attorney is criminal, if he presses for a conviction, when upon the evidence he believes the prisoner innocent. If the evidence is not plain enough to justify a *nolle pros.*, a public prosecutor should submit the case, with such comments as are pertinent, accompanied by a candid statement of his own doubts.

13.—An attorney cannot reject the defense of a person accused of a criminal offense, because he knows or believes him guilty. It is his duty by all fair and honorable means to present such defenses as the law of the land permits, to the end that no one may be deprived of life or liberty, but by due process of law.

14.—An attorney must decline in a civil cause to conduct a prosecution, when satisfied that the purpose is merely to harass or injure the opposite party, or to work oppression and wrong.

15.—It is bad practice for an attorney to communicate or argue privately with the judge as to the merits of his cause.

16.—Newspaper advertisements, circulars, and business cards, tendering professional services to the general public, are proper; but special solicitation of particular individuals to become clients ought to be avoided. Indirect advertisement for business, by furnishing or inspiring editorials or press notices, regarding causes in which the attorney takes part, the manner in which they are conducted, the importance of his positions, the magnitude of the interests involved, and all other like self-laudation, is of evil tendency, and wholly unprofessional.

17.—Newspaper publications by an attorney as to the merits of pending or anticipated litigation, call forth discussion and reply from the opposite party, tend to prevent a fair trial in the courts, and otherwise prejudice the due administration of justice. It requires a strong case to justify such publications; and when proper, it is unprofessional to make them anonymously.

18.—When an attorney is a witness for his client except as to formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the cause to other counsel. Except when essential to the ends

of justice, an attorney should scrupulously avoid testifying in court in behalf of his client, as to any matter.

19.—The same reasons which make it improper in general for an attorney to testify for his client, apply with greater force to assertions, sometimes made by counsel in argument, of personal belief in the client's innocence or the justice of his cause. If such assertions are habitually made they lose all force and subject the attorney to falsehoods; while the failure to make them in particular cases will often be esteemed a tacit admission of belief of the client's guilt, or the or the weakness of his cause.

20.—It is indecent to hunt up defects in titles and the like and inform thereof, in order to be employed to bring suit; or to seek out a person supposed to have a cause of action, and endeavor to get a fee to litigate about it. Except where ties of blood, relationship or trust, make it an attorney's duty, it is unprofessional to volunteer advice to bring a lawsuit. Stirring up strife and litigation is forbidden by law, and disreputable in morals.

21.—Communications and confidence between client and attorney are the property and secrets of the client, and can not be divulged, except at his instance; even the death of the client does not absolve the attorney from his obligation of secrecy.

22.—The duty not to divulge the secrets of clients extend further than mere silence by the attorney, and forbids accepting retainers or employment afterwards from others involving the client's interests, in the matters about which the confidence was reposed. When the secrets or confidence of a former client may be availed of or be material, in a subsequent suit, as the basis of any judgment which may injuriously affect his rights, the attorney cannot appear in such cause, without the consent of his former client.

23.—An attorney can never attack an instrument or paper

drawn by him for any infirmity apparent on its face ; nor for any other cause where confidence has been reposed as to the facts concerning it. Where the attorney acted as a mere conveyance, and was not consulted as to the facts, and unknown to him, the transaction amounted to a violation of the criminal laws he may assail it on that ground, in suits between third persons, or between parties to the instrument and strangers.

24.—An attorney openly, and in his true character, may render purely professional services before committees, regarding proposed legislation, and in advocacy of claims before departments of the government, upon the same principles of ethics which justify his appearance before the courts ; but it is immoral and illegal for an attorney so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding, to influence action.

25.—An attorney can never represent conflicting interests in the same suit or transaction, except by express consent of all so concerned, with full knowledge of the facts. Even then such a position is embarrassing, and ought to be avoided. An attorney represents conflicting interests within the meaning of this rule, when it is his duty, in behalf of one of his clients, to contend for that which duty to other clients in the transaction requires him to oppose.

26.—“ It is not a desirable professional reputation to live and die with—that of a rough tongue, which makes a man to be sought out and retained to gratify the malevolent feeling of a suitor, in hearing the other side well lashed and villified.”

27.—An attorney is under no obligation to minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client can not be made the keeper of the attorney's conscience in professional matters. He cannot demand as of right that his attorney shall abuse the opposite

party or indulge in offensive personalities. The attorney, under the solemnity of his oath, must determine for himself whether such a course is essential to the ends of justice and therefore justifiable.

28.—Clients and not their attorneys are the litigants; and whatever may be the ill-feeling existing between clients, it is unprofessional for attorneys to partake of it in their conduct and demeanor to each other, or to suitors in the case.

29.—In the conduct of litigation and the trial of causes, the attorneys should try the merits of the cause, and not try each other. It is not proper to allude to, or comment upon, the personal history, or mental or physical peculiarities or idiosyncracies of opposite counsel. Personalities should always be avoided, and the utmost courtesy always extended to an honorable opponent.

30.—As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite attorney to trial when he is under affliction or bereavement; forcing the trial on a particular day to the serious injury of the opposite attorney, when no harm will result from a trial at a different time; the time allowed for signing a bill of exceptions, crossing interrogatories, and the like; the attorney must be allowed to judge. No client has a right to demand that his attorney shall be illiberal in such matters, or that he should do anything therein repugnant to his own sense of honor and propriety; and if such a course is insisted on, the attorney should retire from the cause.

31.—Where an attorney has more than one regular client, the oldest client in the absence of some agreement should have the preference of retaining the attorney, as against his other clients in litigation between them.

32.—The miscarriages to which justice is subject, and the uncertainty of predicting results, admonish attorneys to beware

of bold and confident assurances to clients, especially where the employment depends upon the assurance, and the case is not plain.

33.—Prompt preparation for trial, punctuality in answering letters and keeping engagements, are due from an attorney to his client, and do much to strengthen their confidence and friendship.

34.—An attorney is in honor bound to disclose to the client at the time of retainer, all the circumstances of his relation to the parties, or interest or connection with the controversy, which might justly influence the client in the selection of his attorney. He must decline to appear in any cause where his obligation or relations to the opposite parties will hinder or seriously embarrass the full and fearless discharge of all his duties.

35.—An attorney should endeavor to obtain full knowledge of his client's cause before advising him, and is bound to give him a candid opinion of the merits and probable result of his cause. When the controversy will admit of it, he ought to seek to adjust it without litigation, if practicable.

36.—Where an attorney, during the existence of a relation, has lawfully made an agreement which binds his client, he can not honorably refuse to give the opposite party evidence of the agreement, because of his subsequent discharge or instructions to that effect by his former client.

37.—Money or other trust property coming into the possession of the attorney should be promptly reported, and never commingled with his private property or used by him, except with the client's knowledge and consent.

38.—Attorneys should, as far as possible, avoid becoming either borrowers or creditors of their clients; and they ought scrupulously to refrain from bargaining about the subject matter of their litigation, so long as the relation of attorney and client continues.

39.—Natural solicitude of clients often prompts them to offer assistance of additional counsel. This should not be met, as it sometimes is, as evidence of want of confidence; but, after advising frankly with the client, it should be left to his determination.

40.—Important agreements affecting the rights of clients should, as far as possible, be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made, because not reduced to writing, as required by rules of court.

41.—An attorney should not ignore known customs or practice of the bar or of a particular court, even when the law permits, without giving opposing counsel timely notice.

42.—An attorney should not attempt to compromise with the opposite party, without notifying his attorney, if practicable.

43.—When attorneys jointly associated in a cause can not agree as to any matter vital to the interest of the client, the course to be pursued should be left to his determination. The client's decision should be cheerfully acquiesced in unless the nature of the difference makes it impracticable for the attorney to co-operate heartily and effectively; in which event, it is his duty to be asked to be discharged.

44.—An attorney coming into a cause in which others are employed, should give notice as soon as practicable, and ask for a conference, and if the association is objectionable to the attorney already in the cause, the other attorney should decline to take part, unless the first attorney is relieved.

45.—An attorney ought not to engage in discussion or arguments about the merits of the case with the opposite party, without notice to his attorney.

46.—Satisfactory relations between attorney and client are best preserved by a frank and explicit understanding at the outset, as to the amount of the attorney's compensation; and

where it is possible, this should always be agreed on in advance,

47.—In general it is better to yield something to a client's dissatisfaction at the amount of the fee, though the sum be reasonable, than to engage in a law suit to justify it, which ought always to be avoided, except as a last resort to prevent imposition or fraud.

48.—Men, as a rule, overestimate rather than under value the worth of their services, and attorneys in fixing their fees should avoid charges which unduly magnify the value of their advice and services, as well as those which practically belittle them. A client's ability to pay can never justify a charge for more than the service is worth; though his poverty may require a less charge in many instances, and sometimes none at all.

49.—An attorney may charge a regular client, who entrusts him with all his business, less for a particular service than he would charge a casual client for like services. The element of uncertainty of compensation where a contingent fee is agreed on, justifies higher charges than where compensation is assured.

50.—In fixing fees the following elements should be considered: First. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to properly conduct the cause. 2d. Whether the particular case will debar the attorney's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that the attorney would otherwise be employed; and herein of the loss of other business while employed in the particular case, and the antagonism with other clients growing out of the employment. 3d. The customary charges of the bar for similar services. 4th. The real amount involved and the benefit resulting from the services.

5th. Whether the compensation was contingent or assured.

6th. Is the client a regular one, retaining the attorney in all his business? No one of these considerations is in itself controlling. They are mere guides in ascertaining what the service was really worth; and in fixing the amount it should never be forgotten that the profession is a branch of the administration of justice and not a mere money getting trade.

51.—Contingent fees may be contracted for; but they lead to many abuses, and certain compensation is to be preferred.

52.—Casual and slight services should be rendered without charge by one attorney to another in his personal cause; but when the service goes beyond this, an attorney may be charged as other clients. Ordinary advice and services to the family of a deceased attorney should be rendered without charge in most instances; and where the circumstances make it proper to charge, the fees should generally be less than in cases of other clients.

53.—Witnesses and suitors should be treated with fairness and kindness. When essential to the ends of justice to arraign their conduct or testimony, it should be done without villification or unnecessary harshness. Fierceness of manner and uncivil behavior can add nothing to the truthful dissection of a false witness's testimony and often rob deserved strictures of proper weight.

54.—It is the duty of the court and its officers to provide for the comfort of jurors. Displaying special concern for their comfort, and volunteering to ask favors for them, while they are present—such as frequent motions to adjourn trials, or take a recess, solely on the ground of the jury's fatigue, or hunger, and uncomfortableness of their seats, or the court room, and the like—should be avoided. Such intervention of attorneys, when proper, ought to be had privately with the court; whereby there will be no appearance of fawning upon the jury, nor ground for ill-feeling of the jury towards the

court or opposite counsel, if such requests are denied. For like reasons, one attorney should never ask another in the presence of the jury, to consent to its discharge or dispersion; and when such a request is made by the court, the attorneys, without indicating their preference, should ask to be heard after the jury withdraws.

55.—An attorney ought never to converse privately with jurors about the case; and must avoid all unnecessary communication, even as to matters foreign to the cause, both before and during the trial. Any other course, no matter how blameless the attorney's motives, gives color to the imputing evil designs, and often leads to scandal in the administration of justice.

56.—An attorney assigned as counsel for an indigent prisoner ought not to ask to be excused for any light cause, and should always be a friend to the defenceless and oppressed.

FORMER PRESIDENTS.

*WALTER L. BRAGG,
January 20, 1879, to December 4, 1879.

EDMUND W. PETTUS,
December 4, 1879, to December 2, 1880

*JOHN LITTLE SMITH,
December 2, 1880, to December 30, 1881.

*EDWARD A. O'NEAL,
December 30, 1881, to November 29, 1882.

*M. L. STANSEL,
November 29, 1882, to August 2, 1883.

*HENRY C. SEMPLÉ,
August 2, 1883, to August 7, 1884.

*N. H. R. DAWSON,
August 7, 1884, to December 3, 1884:

*WILLIAM H. BARNES,
December 3, 1884, to December 3, 1885.

*WILLIAM M. BROOKS,
December 3, 1885, to December 2, 1886.

*HENRY C. TOMPKINS,
December 2, 1886, to December 15, 1887.

*WILBUR F. FOSTER,
December 15, 1887, to December 20, 1888.

MILTON HUMES,
December 20, 1888, to August 1, 1889.

*THOMAS H. WATTS,
August 1, 1889, to August 7, 1890.

HANNIS TAYLOR,
August 7, 1890, to July 9, 1891.

*Deceased.

FORMER PRESIDENTS.

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A. B. M'EACHIN,
July 9, 1891, to July 7, 1892.

***A. C. HARGROVE,**
July 7, 1892, to July 6, 1893.

J. R. DOWDELL,
July 6, 1893, to July 11, 1894.

JAMES E. WEBB,
July 11, 1894, to July 11, 1895.

***DANIEL S. TROY,**
July 11, 1895, to September 25, 1895.

***RICHARD C. JONES,**
First Vice-President, acted as President
from the death of Col. Troy,
September 25, 1895, to August 6, 1896.

RICHARD H. CLARKE,
August 6, 1896, to July 1, 1897.

JOHN P. TILLMAN,
July 1, 1897, to June 18, 1898.

***JOHN D. ROQUEMORE,**
June 18, 1898, to June 17, 1899.

JOSEPH J. WILLETT,
June 17, 1899, to June 16, 1900.

THOMAS G. JONES,
June 16, 1900, to June 29, 1901.

EDWARD L. RUSSELL,
June 29, 1901, to July 5, 1902.

LAWRENCE COOPER,
July 5, 1902, to June 20, 1903.

EDWARD DEGRAFFENRIED,
June 20, 1903.

***Deceased.**

OFFICERS OF THE ASSOCIATION.

1903--1904.

PRESIDENT :

ED. DEGRAFFENRIED, Greensboro.

VICE-PRESIDENTS :

JOHN B. KNOX, Anniston, HORACE STRINGFELLOW, Montgomery,
W. B. BANKHEAD, Huntsville, J. MANLY FOSTER, Tuscaloosa,
J. W. GRAY, Mobile.

SECRETARY AND TREASURER :

ALEX. TROY, Montgomery.

EXECUTIVE COMMITTEE :

S. H. DENT, JR., *Chairman*,
B. P. CRUM, WM. M. BLAKEY,
GASTON GUNTER, ALEX. TROY, *Ex-officio*.

CENTRAL COUNCIL :

THOMAS R. ROULHAC, *Chairman*, Sheffield,
W. W. CALLAHAN, Decatur, E. K. CAMPBELL, Birmingham,
A. S. VANDEGRAFF, Tuscaloosa, CHARLES P. JONES, Montgomery.

COMMITTEES.

1903--1904.

ON JURISPRUDENCE AND LAW REFORM :

Charles G. Brown, Chairman	Birmingham.
Paul Speake	Huntsville.
W. H. Thomas	Montgomery.
C. B. Verner	Tuscaloosa.
J. H. Nathan	Sheffield.

ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE :

John C. Anderson, Chairman	Demopolis.
N. D. Denson	Lafayette.
A. H. Alston	Clayton.
A. D. Sayre	Montgomery.
P. H. Pitts	Selma.

ON LEGAL EDUCATION AND ADMISSION TO THE BAR :

W. S. Thorington, Chairman	Tuscaloosa.
James Weatherly	Birmingham.
A. S. Van deGraaff	Tuscaloosa.
John C. Eyster	New Decatur.
D. P. Bestor, Jr.	Mobile.

ON CORRESPONDENCE :

F. G. Bromberg, Chairman	Mobile.
W. B. Bankhead	Huntsville.
M. Sollie	Ozark.
Lee C. Bradley	Birmingham.
W. W. Callahan	Decatur.

ON LEGISLATION :

J. J. Mayfield, Chairman	Tuscaloosa.
R. F. Ligon	Montgomery.
Ray Rushton	Montgomery.
W. B. Oliver	Tuscaloosa.
S. L. Brewer	Tuskegee.

ON PUBLICATION :

Thomas M. Owen, Chairman.....	Montgomery.
J. T. Ashcraft.....	Florence.
S. L. Cox.....	Carrollton.
Robert L. Hipp.....	Cullman.
Leon Weil.....	Montgomery.

ON GRIEVANCES :

A. G. Smith, Chairman.....	Birmingham.
R. H. Clarke.....	Mobile.
John G. Winter.....	Montgomery.
L. E. Jeffries.....	Selma.
George P. Jones.....	Florence.

ON LOCAL BAR ASSOCIATIONS :

Phares Coleman, Chairman.....	Montgomery.
J. A. W. Smith.....	Birmingham.
R. L. Harmon.....	Montgomery.
R. C. Brickell.....	Huntsville.
N. E. Stallworth.....	Mobile.

ON LEGISLATIVE ENACTMENT :

George P. Harrison, Chairman.....	Opelika.
W. I. Bullock.....	Russellville.
J. Manly Foster.....	Tuscaloosa.

DELEGATES TO AMERICAN BAR ASSOCIATION :

Samuel D. Weakley.....	Birmingham.
Lawrence Cooper.....	Huntsville.
Louis E. Jeffries.....	Selma.

HONORARY MEMBERS.

Hon. T. W. COLEMAN,	Hon. JON. HARALSON,
Hon. T. N. McCLELLAN.	Hon. H. T. TOULMAN,
Hon. S. D. THOMPSON, N. Y.	Hon. S. B. TONEY, KY.
Hon. GEORGE HOADLY, N. Y.	Hon. ALEXANDER C. KING, GA.
Hon. JOHN F. DILLON, N. Y.	Hon. WM. J. CURTIS, N. Y.
Hon. J. R. DOWDELL,	Hon. J. R. TYSON,
Hon. H. A. SHARPE,	Hon. D. D. SHELBY,
Hon. H. M. SOMMERVILLE,	Hon. H. A. HERBERT, D. C.
Hon. R. W. WALKER,	Hon. J. R. LAMAR, GA.
Hon. J. M. FALKNER,	Hon. EDW'D M. SHEPARD, N. Y.
Hon. THOS. G. JONES,	

MEMBERS, 1903--1904.

Alston, A. H.....	Clayton.
Anderson, J. C.....	Demopolis.
Ashcraft, J. T.....	Florence.
Austill, H.....	Mobile.
Bankhead, W. B.....	Huntsville.
Bestor, D. P.....	Mobile.
Bestor, D. P. Jr.....	Mobile.
Blakey, Wm. M.....	Montgomery.
Boykin, W. J.....	Gadsden.
Bradley, Lee C.....	Birmingham.
Brannen, E. R.....	Troy.
Brandon, W. W.....	Tuscaloosa.
Brewer, S. L.....	Tuskegee.
Brickell, R. C.....	Huntsville.
Bricken, C. R.....	Luverne.
Bromberg, F. G.....	Mobile.
Brown, Charles G.....	Birmingham.
Bullock, W. I.....	Russellville.
Cafey, F. G.....	New York, N. Y.
Callahan, W. W.....	Decatur.
Caldwell, John M.....	Anniston.
Campbell, E. K.....	Birmingham.

Chambers, W. L.....Washington, D. C.
 Clarke, R. H.....Mobile.
 Coleman, Daniel.....Huntsville.
 Coleman, Phares.....Montgomery.
 Cooper, Lawrence.....Huntsville.
 Cox, Samuel L.....Carrollton.
 Crum, Benjamin P.....Montgomery.

Davison, J. M.....Brewton.
 deGraffenried, E.....Greensboro.
 Denson, N. D.....Lafayette.
 Dent, S. H., Jr.....Montgomery.

Evans, A. A.....Clayton.
 Evans, G. A.....Birmingham.
 Evins, R. B.....Greensboro.
 Eyster, John C.....Decatur.

Ferguson, C. W.....Birmingham.
 Fitts, W. C.....Mobile.
 Fitzpatrick, Alva.....Montgomery.
 Foster, H. B.....Tuscaloosa.
 Foster, J. M.....Tuscaloosa.
 Francis, W. R.....Decatur.

Gipson, H. E.....Prattville.
 Graham, E. A.....Montgomery.
 Gray, James W.....Mobile.
 Gunter, W. A.....Montgomery.
 Gunter, Gaston.....Montgomery.

Harmon, R. L.....Montgomery.
 Harrison, George P.....Opelika.
 Heflin, J. Thos.....Lafayette.
 Hinton, Isaac R.....Carrollton.
 Hipp, Robert L.....Cullman.
 Holloway, J. L.....Montgomery.
 Hundley, O. R.....Huntsville.
 Humes, Milton.....Huntsville.

Jeffries, Louis E.....Selma.
 John, S. W.....Birmingham.
 Jones, Charles P.....Montgomery.

Jones, George W.....	Montgomery.
Jones, George P.....	Florence.
King, J. C.....	Huntsville.
Kirk, J. T.....	Tuscumbia.
Kirkland, W. W.....	Ozark.
Knox, John B.....	Anniston.
Lane, L. M.....	Greenville.
Lanier, C. A. Jr.....	Montgomery.
Latady, A.....	Birmingham.
Lee, W. L.....	Columbia.
LeGrand, M. P.....	Montgomery.
Letcher, J. T.....	Montgomery.
Ligon, R. F.....	Montgomery.
London, A. T.....	Birmingham.
London, John.....	Birmingham.
Lowe, R. J.....	Birmingham.
Lull, Frank W.....	Wetumpka.
Martin, W. L.....	Montgomery.
Massie, P. C.....	Montgomery.
Mayfield, J. J.....	Tuscaloosa.
McGuire, Wm. C.....	Montgomery.
McIntyre, C. P.....	Montgomery.
Mallory, H. S. D.....	Selma.
Moore, George F.....	Montgomery.
Moseley, L. M.....	Union Springs.
Mullins, Tipton.....	Clanton.
Murphy, J. Jr.....	Huntsville.
Nathan, J. H.....	Sheffield.
Oliver, W. B.....	Tuscaloosa.
Owen, Thomas M.....	Montgomery.
Parker, George H.....	Cullman.
Parks, R. H.....	Troy.
Peach, George W.....	Clayton.
Pearson, R. H.....	Birmingham.
Pearson, W. W.....	Montgomery.
Pettus, E. W.....	Selma.
Pitts, P. H.....	Selma.

Pleasants, Shelby S. Huntsville.
 Pugh, Jno. C. Birmingham.
 Purifoy, F. M. Birmingham.

Rabb, C. S. Evergreen.
 Reese, W. S. Montgomery.
 Richardson, J. C. Gr i e.
 Rivers, E. R. Birmingham.
 Roulhac, Thomas R. Sh. field.
 Rushion, Ray... Montgomery.
 Russell, E. L. Mobile.

Sanders, J. F. Elba.
 Sanders, W. T. Athens.
 Sayre, A. D. Montgomery.
 Screws, W. W. Montgomery.
 Smith, A. G. Birmingham
 Smith, Mac. A. Prattville.
 Smith, J. A. W. Birmingham.
 Smith, John V. Montgomery.
 Sollie, M. Ozark.
 Speake, Paul. Huntsville.
 Stallworth, N. E. Mobile.
 Steele, N. L. Huntsville.
 Steiger, R. E. Montgomery.
 Sternfield, Julius. Montgomery.
 Stewart, James H. Marion.
 Stringfellow, H. Montgomery.

Tayloe, W. H. Uniontown.
 Taylor, Hannis Washington, D. C.
 Thorington, W. S. Tuscaloosa.
 Thomas, W. H. Montgomery.
 Tillman, John P. Birmingham.
 Tomlinson, John W. Birmingham.
 Trotter, James. Bessemer.
 Troy, Alexander. Montgomery.

Van de Graaff, A. S. Tuscaloosa.
 Verner, C. B. Tuscaloosa.

Weakley, S. D. Birmingham.
 Weatherly, James. Birmingham.

Webb, James E	Birmingham.
Weil, Leon	Montgomery.
Weil, Lee H.....	Montgomery.
Wiley, A. A.....	Montgomery.
Wilson, Massey.....	Montgomery.
White, F. S.....	Birmingham.
Willett, J. J	Anniston.
Winter, John G.....	Montgomery.
Wood, J. R.....	Tuskegee.
Wood, S. A.....	Birmingham.

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PROCEEDINGS
OF THE
TWENTY-SEVENTH ANNUAL MEETING



OF THE
Alabama State
Bar
Association



HELD AT
MONTGOMERY, ALABAMA
JULY 8 AND 9, 1904

TW

A

PROCEEDINGS

OF THE

TWENTY-SEVENTH ANNUAL MEETING

OF THE

ALABAMA STATE BAR ASSOCIATION

HELD AT

MONTGOMERY, ALA., JULY 8 AND 9

1904

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**MONTGOMERY, ALA.**  
**WOODRUFF CO., PRINTERS AND BINDERS**  
**1904.**



## PROCEEDINGS.

---

HALL OF THE HOUSE OF REPRESENTATIVES,  
MONTGOMERY, ALA., July 8th, 1904.

The Twenty-Seventh Annual Meeting of the Alabama State Bar Association was called to order by the President, Edward deGraffenried, Esq., in the Hall of the House of Representatives in the Capitol at Montgomery, Alabama, at 10 o'clock, A. M. on Friday, July 8th, 1904.

Mr. Roulhac:

Mr. President: As Chairman of the Central Council, I present the following applicants whom the Central Council recommend for election as members of the Association:

Thomas L. Sowell, C. S. McDowell, Henry R. Dill, Vassar L. Allen, John A. Elmore, Robt. Tyler Goodwyn, Armstead Brown, Bernard Harwood, John McKinley, L. K. Pounders, W. F. Hogue, A. W. Stewart, W. O. Johnson, E. W. Faith, C. E. Crenshaw, Daniel Partridge, Jr., Henry Fitts, Alex. D. Pitts, John B. Tally, D. S. Hausman, P. A. McDaniel, E. H. Foster, Jr., Geo. P. Cooper, W. A. Crowe, W. H. Standifer, Allen J. Roulhac, J. L. Andrews, Walker Percy, J. W. Davidson, Robt. H. Wilhoyte, Jonathan R. Thomas.

Mr. Blakey moved that the Secretary of the Association cast the ballot of the Association for the gentlemen named in the report.

Motion adopted, and Secretary cast the ballot of the

Association, and the President declared the applicants elected.

Mr. W. H. Thomas:

Mr. President: At this time I have a motion which I think should come before the exercises of the day. The Secretary has informed us through the press that there are certain delegates to be selected by the Association to the Universal Congress of Lawyers and Jurists. I move that the President of this Association appoint the delegates, and include among them the President and the Secretary of this Association.

Mr. Roulhac:

I second the motion. I understand the present President.

Mr. W. H. Thomas:

Yes; and I will ask the gentleman to put the motion to the Association.

The President:

The Secretary desires to make a statement before the motion is put.

The Secretary:

Mr. President: For the information of the members of the Association I will state that this communication came from the Secretary of the Executive Committee of the Universal Congress of Lawyers and Jurists, which I will read to the Association.

Motion adopted unanimously.

The President:

I will announce the delegates later.

The next order of business is reading the address by the President, which I will now read:

(*Appendix.*)

The President:

The next order of business is report of the Treasurer:

The Treasurer then read his report.

### TREASURER'S REPORT.

MONTGOMERY, ALA., July 8th, 1904.

*Mr. President and Gentlemen of the Association:*

The Treasurer submits the following report of the finances of the Association for the year ending July 8th, 1904:

#### RECEIPTS.

|                                                     |                  |
|-----------------------------------------------------|------------------|
| To balance on hand at meeting, June 19th, 1903..... | \$ 555 50        |
| To cash received from annual dues.....              | 745 00           |
| Total.....                                          | <hr/> \$1,300 50 |

#### DISBURSEMENTS.

1903.

|                                                                              |         |
|------------------------------------------------------------------------------|---------|
| June 19 Expenses at meeting.....                                             | \$ 4 50 |
| June 23 Dinner at Lake on 20th.....                                          | 214 95  |
| June 30 Stenographer.....                                                    | 12 50   |
| July 13 Postage.....                                                         | 2 00    |
| Aug. 4 Postage.....                                                          | 1 00    |
| Sept. 1 Woodruff Co., Letter Heads.....                                      | 2 00    |
| Sept. 21 Postage.....                                                        | 2 00    |
| Dec. 3 Woodruff Co., 500 copies Proceedings<br>26th Annual Meeting.....      | 204 00  |
| Dec. 8 Expressage and Postage copies sent<br>President for distribution..... | 2 45    |
| Dec. 14 Postage on Copies Proceedings, distributed... ..                     | 21 00   |

1904.

|                                                                                                                        |       |
|------------------------------------------------------------------------------------------------------------------------|-------|
| Feb. 2 Postage.....                                                                                                    | 1 00  |
| Feb. 26 Woodruff Co., Circular Notice of Dues.                                                                         | 2 00  |
| Feb. 26 Postage on Same.....                                                                                           | 3 00  |
| M'ch 4 A. C. Crawford, Clerk Cir. Court, Henry County in settling costs in disbar.<br>proceedings 'Jos. P. Pelham..... | 20 00 |

## ALABAMA STATE BAR ASSOCIATION.

|         |                                                                           |        |          |
|---------|---------------------------------------------------------------------------|--------|----------|
| M'ch 22 | Book of drafts.....                                                       | 25     |          |
| M'ch 28 | Letter file.....                                                          | 25     |          |
| Ap'l 27 | Postage .....                                                             | 2 00   |          |
| May 1   | Expense Collection of Drafts.....                                         | 7 30   |          |
| June 1  | Expenses Secretary 4 trips to Birmingham to attend meeting Cen. Council.. | 12 00  |          |
| June 10 | Postage.....                                                              | 1 00   |          |
| June 21 | Postage on Programs 27th Annual Meeting.....                              | 5 00   |          |
| July 2  | Postage ....                                                              | 1 00   |          |
| July 2  | L. & N. R. R. Co., train to Lake, Saturday, 9th inst.....                 | 40 09  |          |
| July 5  | Woodruff Co., Programs, Env. Cards..                                      | 4 75   |          |
| July 5  | Mont. Shoot. Club—Rent Lake on 9th.                                       | 15 00  |          |
| July 7  | Secretary's Salary to July 1st.....                                       | 300 00 | \$890 95 |

The balance remaining on hand is..... \$419 55

ALEXANDER TROY, *Treasurer.*

Audited and approved July 7th, 1904.

WM. M. BLAKEY,  
GASTON GUNTER,

Sub. Committee of Executive Committee.

On motion the report was received and filed.

The President:

The next order of business is the report of Executive Committee.

Mr. Crum:

#### REPORT OF THE EXECUTIVE COMMITTEE.

This Committee begs leave to submit the following report:

It has held meetings from time to time, as the necessities of the Association demanded, for the transaction of such business as came into its hands.

The Committee has examined the accounts of the Treasurer through a sub-committee composed of Messrs. Gaston Gunter and W. M. Blakey who audited the books and checked the vouchers and found the same correct, in every particular, as well as neatly and properly kept.

The Committee selected the 8th and 9th of July as the dates for the meeting, and the place of meeting was fixed at Montgomery. This seemed to be the most convenient time on account of the session of the various courts.

The Committee invited the Honorable Fabius H. Busbee of North Carolina to deliver the annual address before the Association. We congratulate the Association upon the acceptance of the invitation by so distinguished a citizen and able lawyer of our sister State.

The Committee also invited various members of the Bar to read papers before the Association, a number of whom have accepted, as shown by the program sent out by the Secretary, and published in the different papers of the State.

Since our last meeting three members of the Association have died: Hon. W. I. Bullock, of Russellville, Judge John G. Winter and Capt. Edward A. Graham, of Montgomery, Alabama.

We recommend the appointment of a committee for the purpose of preparing memorial sketches of these distinguished members of our Association, the same to be published in our proceedings.

The Committee has made arrangements for a dinner, according to the usual custom, to be given to the members of the Association at Jackson's Lake, on Saturday, the 9th inst. A special train will leave the Union Depot at ten o'clock and the meeting will be held at the Lake on that day.

We congratulate the Association upon the information we have that a number of applications will be made for membership at this meeting.

The object of the Association is of such a high character that every member of the Alabama Bar should also be a member of this Association. This body has long had the power of instituting disbarment proceedings and under a recent Act of the Legislature it has been made the duty of the various prosecuting officers of the State to begin and conduct disbarment proceedings through this Association. This law has already borne good fruit.

With the law now in existence relative to admission to the Bar, and the power in the State Bar Association to compel the prosecuting attorneys of the State to prosecute disbarment proceedings, it can only be a question of time when the Alabama Bar will become rid of all objectionable characters, if such there be, as well as maintain a high standard of admission which, in the end, should make it rank even higher than it has in its glorious past.

Respectfully submitted,

S. H. DENT, JR., *Chairman*,  
B. P. CRUM,  
W. M. BLAKEY,  
GASTON GUNTER,  
ALEX. TROY, *Ex-Officio*,  
Executive Committee.

On motion the report was received and filed.

Mr. Blakey:

Mr. President: I move that a committee of five be appointed to nominate officers of the Association for the ensuing year, and make their report to the Association tomorrow.

Motion was put to the Association and adopted.

The President:

I have received a letter from Hon. Charles G. Brown, stating that he could not be present, and for that reason the report of the Committee on Jurisprudence and Law Reform is not ready at this time. There has been forwarded, however, a report by Hon. John C. Anderson, Chairman of the Committee on Judicial Administration and Remedial Procedure. I suggest that the Secretary read that report now.

On motion of the Secretary the reading of the report was postponed until the evening session, and the Association took a recess of fifteen minutes in order that the members might be presented to Hon. F. H. Busbee.

The President:

The next order of business is the Annual Address of Hon. Fabius H. Busbee, of North Carolina, on "The Southern Lawyer and the Negro."

The Secretary:

I move the appointment of a Committee of three to escort Mr. Busbee to the stand.

The motion was adopted.

The President appointed as a committee of escort Messrs. Alex. Troy, Thomas R. Roulhac and Alex. T. London.



The President:

Gentlemen of the Association: I am informed that Judge Roulhac and Mr. Busbee were boys together, and I request that Judge Roulhac introduce him to this Association:

Mr. Roulhac:

Mr. President and Gentlemen of the Association: It is a very great pleasure indeed to present to you the orator upon this occasion, not only on my own account personally in meeting him again, but because I know how much pleasure and enjoyment he will give this Association. I have known him all his days, man and boy—I will not say how many those days have been on account of both of us—but in his youth he made every effort to acquire learning, to become useful and an honored citizen of his own State, and in all the days which have succeeded he has verified the promise of his youth. I present to you, Mr. President, Ladies and Gentlemen, the Hon. Fabius H. Busbee, of North Carolina.

Hon. Fabius H. Busbee:

It is going to be exceedingly difficult for me to live up to the advance notices that my too partial friends and the press have given, and I beg you will not handicap me by too great credence in the flattering remarks of my former associate over whose eyes is the glamour that boyhood brings.

Mr. Busbee then delivered his address.

*(Appendix.)*

Mr. Coleman:

Mr. President: I move that the thanks of the Alabama State Bar Association be tendered Mr. Busbee, and in re-

cognition of our appreciation of his able address that he be elected an honorary member of the Alabama State Bar Association.

Motion adopted unanimously.

The President:

The next order of business is the reading of a paper by C. P. McIntyre, Esq., on "Civil Procedure."

Mr. McIntyre then read his paper.

(Appendix.)

Mr. A. T. London:

Mr. President: I desire to introduce a resolution, which I will ask the Secretary to read.

The Secretary read the resolution as follows:

"WHEREAS, By reason of the large increase in the business in the Federal Court for the Northern District of Alabama, the dockets are so congested as to amount to a practical denial of justice, and provision for an additional judge is imperatively necessary, therefore

*Be it Resolved*, That it is the sense of this Association that an additional Federal District Judge should be provided for in this State at the earliest practicable day;

*Resolved, further*, That the Central Council of this Association be, and it is hereby instructed to take all necessary steps to carry out the provisions of the foregoing resolution."

Mr. A. T. London:

I desire to say that my reason for introducing the resolution is that the preamble simply states the fact that every member of the bar in Birmingham knows. It is hardly possible to get a trial. The immense amount of bankruptcy proceedings puts such a burden on the judge that it is physically impossible for one man to do the work, and I am satisfied that were the gentlemen of the bar at Birmingham aware that this question would come up here before the Association there would be a large at-

tendance of the members of that bar. I ask that the resolution go over until tomorrow, and be made a special order for 12 o'clock.

The motion was adopted.

The Association, on motion of Mr. W. L. Martin, adjourned until 3:30 p. m.

---

#### AFTERNOON SESSION.

The Association met pursuant to adjournment.

The President:

I will now announce the Committee to nominate officers of the Association for the ensuing year: Messrs. W. M. Blakey, P. H. Pitts, Alex. T. London, W. W. Callahan and Lawrence Cooper.

The President:

I appoint as delegates to the Universal Congress of Lawyers and Jurists the following: Mr. Alex Troy and myself—who were selected by the Association, and Thos. R. Roulhac, Geo. P. Harrison, S. D. Weakley, W. H. Thomas, F. G. Bromberg, Lawrence Cooper and James Weatherly.

The President:

The next order of business is a paper by H. E. Gipson, Esq., on "Delay of the Law as an Excuse for Lynching."

Mr. Gipson then read his paper.

*(Appendix.)*

Mr. Alex. T. London:

I would ask Mr. Gipson if he does not think that the fault in the jury system is that it cannot be carried out, due to diversity of jury laws, particularly in capital cases?

Mr. Gipson:

It is so in some cases.

Mr. A. T. London:

Isn't it so almost all over the State? I think Col. John can state about that. I would like for him to state how many different systems of drawing juries there are in Alabama today?

Mr. John:

I do not know how many.

Mr. A. T. London:

Are there not more than a dozen?

Mr. John:

I have heard so.

Mr. A. T. London:

They have a special one in Montgomery, in Mobile, Dallas, and I suppose other gentlemen here from other parts of the State would state they have different systems. The trial of a man under the jury system is practically a gamble whether the judge will guess right as to what the law is. I think it calls for action on the part of this Association, although I will say in the light of history, the recommendations from the Bar Association to the Legislature, seem heretofore to have been met with unanimous dissent on the part of the Legislature. Very few of our suggestions have received consideration at the hands of the Legislature; the few that have were beneficial. The manner of drawing jurors in capital cases in Alabama is one that ought to be changed. It is almost impossible to secure a conviction of a man confessedly guilty.

Mr. Roulhac:

The first reform since 1865 in the jury law of this State, had its origin in a member of the Association—Gov. Seay's Bill, when he was in the Senate.

Mr. A. T. London:

I understand that, but the proposition I want to bring before the Association is that since that jury law was framed, members of the Legislature, or the lawyers interested in different criminal cases, or some one, has gone to work to patch this general jury law up, and as it stands today, there is no qualification for a juror. They can put a man on the jury to try a case in a complicated civil suit that cannot read or write. In capital cases where there ought to be a method as simple as A. B. C. it is very complicated—the law ought to be repealed.

Mr. Blakey:

One suggestion, Mr. President: In addition to what Mr. London said, the reason so many cases are reversed, is because of giving immaterial charges at the request of the defendant or the solicitor, which if they had not been given, or been given, the jury would not have paid any attention. The Supreme Court knows it, and the lawyer who takes the case up knows it, still they go up to the Supreme Court with a proposition and say because the court refused to, or did give, this charge, you must set the verdict aside, and send the case back and have it tried all over again, when the probabilities are the witnesses will be out of the way. The suggestion I make, would be it should be provided in criminal cases, that the Supreme Court should not be authorized to reverse a case for the giving or refusal to give of a special charge, except the refusal to give, or giving of the general affirmative charge where the whole evidence would be required. I

believe substantial justice would be nearer being done by adopting that rule than anything else we can suggest.

Mr. Callahan:

Mr. President: If that system was adopted, there would not be any more appeals to the Supreme Court in criminal cases. I doubt whether there is a lawyer present who has observed a trial of a criminal case when there was not a conflict in the evidence, and when there is a conflict it is not for the judge to give that charge one way or the other.

Mr. Blakey:

I do not mean exceptions to the general charge by the court, but for these little paper charges that lawyers ask.

Mr. Callahan:

Mr. President: Who is to determine whether the charge is petty or not? It is not the delay of justice, it is the innate devil in the man. There are some people who have no respect for law and no patience with it, and that crowd is always trying to stir up a noise. You take the man who joins a mob, he has no respect for the civil or criminal law either. That is not the trouble, whenever the courts and lawyers suffer themselves to be swept off their feet for a speedy trial, they may just as well not have any. I have knowledge of three cases where the clamor was for speedy trials, and the judge gave way and ordered special grand jury and special court, and I would rather have seen them take the parties out and hang them, because it was nothing short of that. I saw a man sit on the jury and bring in a verdict to hang one of the parties. They tried the next one, he was not on that jury, but the third one came on the same week and he answered every question propounded by the court and qualified

himself for a juror and went on the jury to hang that man. It is the disposition of the people, they don't respect law. There may be some cause for that, it may be that the lawyers and courts are somewhat to blame for that. I must confess lawyers suffer themselves in writing out showings for continuances, to write a stronger showing than it seems to me ought to be written—especially is that true when the lawyer is on the opposite side to me. It seems to me we are liberal in writing out the showing, and I believe it is because we do not have to swear to it. Now as to taking appeals to the Supreme Court, I don't think there will be any serious difficulty there. Examination of the reports will show there are not a great many criminal cases reversed on anything technical. The court has passed that point. There was a time when you could reverse a case on technical questions. You take it up now, and it is decided on something else. This thing of denying the defendant rights that he has had for centuries under the law—my observation in trial of cases is that the defendant does not usually get the sympathy—unless in certain cases, political reasons. The disposition of the public is to punish the man that is caught; it is not the question so much whether he is the right man or not. You may say what you please, sentiment is stronger than evidence, it invades the jury box. Let a prominent man be killed, and nine times out of ten the party who kills him is convicted, but once the prominence is equal then comes the battle, and the play is not for the law but for the jury, and I for one am opposed to any further concessions to this clamor for speedy trials. Whenever you go to the Legislature to tamper with things that have stood for centuries—for ninety per cent. of us don't know what the law is—it is better in the long run to respect old

well established principles, and never change one until the evidence is clear that is wrong.

Mr. Martin:

Mr. President: I understood the reader of the paper to refer to the decision in the Gafford case, and to give approval to it. I think the decision in the Gafford case and in the Flanagan case, both tended very much to sustain mob law in this State. It strikes me that that is the necessary effect, necessary tendency of those decisions. We all know what the Gafford case was. Gafford was first convicted and sentenced to death, then it was the Supreme Court reversed the case. I believe I understood you to say he was convicted a second time and sentenced for life, and that was reversed, and then he was acquitted on the third trial. A miscarriage of justice in that case due to the decision of the Supreme Court in the first instance. I am not able to give my sanction to that decision. Now, Mr. President, a good deal has been said here in abuse of the jury law. The jury law is all right if administered in proper spirit. It is a mistake to say any citizen is a juryman who cannot read or write. If they will select men who come up to the standard prescribed by the general law they will get men who can read and write.

Mr. London:

Anything in the statute requiring them to be able to read and write?

Mr. Martin:

Yes, sir, men esteemed in the community for their fair dealing, and all that.

Mr. London:



Do they put the words "Read and Write?"

Mr. Martin:

The standard prescribed in the Code is such that I don't believe that a man so ignorant that he cannot read and write is a qualified juror. True it don't use the words "read and write" but the words are equivalent, it seems to me, for the use of those words. So far as general law and special law, we have but a few special laws in Alabama for the drawing of jurors. In counties having large cities special laws are indispensable, I dare say. Take the county of Jefferson, large number of criminal cases for trial, it is necessary to have a special law, not for a particular case but for all the capital cases on the docket. In Jefferson the docket was clogged up. So far as summoning special juries it amounted to considerable expense and delay in justice, and the same is true no doubt in Mobile and Montgomery, I know it is in Montgomery. With the exception of the four counties the general jury law applies to the whole State providing for the drawing of juries by the Commissioners Court and Boards of Revenue. In this county the judge of probate and certain officers are made jury commissioners instead of the Board of Revenue. It seems to me the trouble is not so much in the law. In this case like every other case it is not in the law, but in its administration. So long as jury commissioners conform to the law we will have good juries in this State. I want to say I enjoyed the paper written by Mr. Gipson, it is quite an able document.

Mr. Alex T. London:

Mr. President: I have only this to say, if the results

produced by the special jury law in Jefferson county of which we have recent evidence is proof of the goodness of that law, Heaven save the mark! What I insist upon is we know heretofore the jury commissioners have not construed the statute according to its true spirit, hence I want to impose a qualification from which they cannot get away. I reiterate what I stated before, there is nothing in the statute requiring that a juror should read and write. You leave it to their judgment without expressing what the qualifications shall be. I have known cases where complicated figures were involved, and where they could not figure, and know of cases where the foreman could not write the verdict—and yet tell us our jury system is good. I say a law capable of administration to that extent is bad. It tends to the lawlessness that Mr. Gipson refers to, tends to mob violence. I don't want to take away the land marks, but I do want to have the jury system made so plain that any intelligent man can administer the law. You put the qualifications in the statute, and if the juror has not got them you can strike him off the panel.

Mr. Mullins:

Mr. President: There is no human institution that I think as much of as I do that of the law, I love it and appreciate every argument made in its behalf, therefore I deprecate the sentiment broadcast over Alabama which more or less inveighs against the law. The paper as read by Mr. Gipson could possibly be divided into two subjects, one as to the troubles involved in the administration of the law, and the other could be discussed under the head of answering the popular clamor for speedy trials. Something has been said on the administration of law, something said about erroneous decisions, and the sys-

tems of drawing juries. If anything can be done along that line very well. I think perhaps the suggestion about drawing juries is a good one, but I want to take this opportunity to say, that I have no patience or sympathy with any clamor which seeks to bring the law into disrepute and take the form of clamoring for speedy trials, and I think lawyers should speak and act against that sentiment. It does exist in Alabama, and it is due to the fact that many people have no regard for the law. It is a popular effervescence, nobody can tell where it cometh or goeth. Respect for the law is the primary consideration, and I have no sympathy with any effort to have such speedy trial as would in any sense characterize the court as a mob, or give it any of the elements of a mob. General objections are easily made, without being able to give reason for the faith that are in them, a general objection that the courts are full of delay and other general things, and if you pin him down to the point in any particular case, any lawyer who knows anything about the law can beat the delay argument to it at any time. I want the lawyers of Alabama to inveigh against that.

Mr. W. W. Pearson:

Mr. President: Isn't the whole trouble a lack of public sentiment? If there was a disposition on the part of the entire people to enforce the law, the law would be enforced. I remember hearing my brother McGauly here some years ago, speak of the power of the law and public sentiment in Canada. Public sentiment had crystalized against the carrying of concealed weapons. A man was killed by a pistol, and a plea of self defense set up, the reply was you used a pistol, therefore you intended to kill, else you would not have had it with you, it is not the custom to carry weapons, the other man had none—you

premeditated the commission of the crime. Judge Thomas has investigated and given statistics of crime in different countries, and the number in England is the smallest, and it comes from the fact that public sentiment in that country favors the execution of the law. I believe that paper was right, the speaker this morning was right when he said the best thing that the Alabama Bar Association could do would be to attempt to create a public sentiment favoring the enforcement of the law and developing in ourselves a higher code of morals. The lawyer himself is very largely guilty, and he is responsible in a large measure for these crimes. As a general proposition he occupies a high position in his community, he can, if he would, create a healthy public sentiment, and it rests largely upon him to do that thing, and I believe whenever the bar of Alabama get to such a height that it will stand for that which it knows to be right against that which it knows to be wrong, we will have few lynchings in this State, I am glad that our Secretary and others, tell me that this Association is going to build up along lines tending to elevate the tone of membership of the bar of this State. Whenever we come to the point that we will have no lawyers in this State except men who are reputable members of the community in which they reside, we will have proper administration of the law.

Mr. Harmon:

Mr. President: I have always been opposed to mob law, but the more newspaper notoriety on this question of lynching, the more notoriety in public speeches, and in the meetings of the Bar Association, the more numerous will be the lynchings in the State where the notoriety is given. It was deemed wise to abolish public executions, and I believe one of the wisest enactments of our Legisla

ture was the abolishment of public executions. I believe it is equally important to suppress rather than give publicity in all the papers of the land of lynchings or executions by a mob. I believe the way to suppress mob violence and lynchings is by having the judges and solicitors in their respective counties perform the duty that the law points out, the duty which the law prescribes for the judges, the solicitors, the grand and petit juries of the State. There is certainly in Alabama no lack of law on the question of punishing the guilty party. I believe these crimes should be punished, that the guilty parties should be indicted, tried and convicted or acquitted according to the evidence in the case. I do not believe that this class of cases should have the public notoriety that is being given to them, because instead of diminishing I believe it will tend to increase. It is an easy thing to get up and say we are opposed to mob violence and lynchings, but where is the grand jury? In a case where a lynching had occurred, where a brute, be he black or white—who invaded the home of a friend, and taken his wife or daughter, of some respectable citizen, and abused her by criminal assault and murdered her perhaps and the mob found the criminal and was sure of his guilt and executed him, what twelve of this assembly would indict the persons that constituted the mob? Now so far as executing the law in this State is concerned it is a misfortune indeed that the law is not enforced in some instances, but there are white men serving in the penitentiary today who were convicted, indicted by a grand jury of twelve white men, tried by the court and convicted, of lynching a negro. The case was appealed to the Supreme Court, affirmed, and these men, some of them at least have not yet been pardoned by the Governor and are serving their term in

the penitentiary. If you want to abolish lynching by indicting, the only practical way is by reducing the penalties; the punishment, because I care not what the law may be as it reads on the statute books, so long as it is the law of the land that a man to be tried must be indicted in the county where the crime is committed, and must be tried by a jury of twelve men, so long as that remains the law you will not find grand juries nor petit juries to convict men for such offenses where the party is known to be guilty and sentenced to the penitentiary for such an offense or perhaps to hang for the commission of the offense. Where persons engaged in the lynching are guilty of murder and would be sentenced to the penitentiary or hung—in a sense that may be true—but public sentiment is such that the law will not be enforced. Your only remedy is to make the punishment less by making a fine with discretion on the part of the grand jury or judge to impose hard labor, then you will have the guilty parties indicted by the grand jury and tried and convicted by the petit jury. But in a great majority of cases so long as the law remains as it is, that he must be convicted of murder, there are numerous cases in which you will not find grand juries to indict, nor petit juries to convict, because public sentiment cannot be brought up to that point at present, whatever it may be in the future remains to be seen. It seems to me if you will stop the notoriety being given to this subject and make the punishment milder so that every man in every county must understand that wherever a lynching occurs that there will be an indictment and a conviction for at least a misdemeanor so as to put the stamp of disapproval on the offense you may decrease the number of lynchings, but so long as certain crimes are committed in this country where white

men rule and are destined to rule, whether they be committed by the white fiend, or by the black fiend, you may expect the heat of passion to wreak quick vengeance in such cases.

So far as speedy administration of the law in certain cases is concerned, we can have special terms of the court. It can go to the Supreme Court and be made a preferred case. It seems to me that the machinery of our criminal law provides for a speedy trial, unless you take away the right guaranteed by the Constitution to each person to have a fair and impartial trial.

Mr. Faith:

What effect did it have on the community where the citizens of that community were convicted and punished—any disposition to indulge in the practice of lynching since then?

Mr. Harmon:

My information is that there had been no lynching since that time, and my information also is that a large number of citizens have petitioned the Governor to pardon the men. Some have not been pardoned, but are now in the penitentiary.

The President:

The next order of business is the report of the Committee on Judicial Administration and Remedial Procedure by the Chairman Hon. John C. Anderson.

In the absence of Judge Anderson, the Secretary read the report which had been sent him by the Chairman.

*(Appendix.)*

On motion report of Committee was received and filed.

Mr. Alex. T. London:

Mr. President: My information is that the present Central Council has taken action in many cases in regard to disbarment of certain members of the Bar. For one I desire to express my profound thanks to the Council, and I think it becoming that the action of the Central Council in this respect should be put before the Association, and hence I move that the Central Council be instructed to report to the Association tomorrow its action in this respect, and in such other respects as they may deem to be in the best interests of the Association. I desire to state to the Chairman that this motion is not made with a view of rigid instructions, but simply to let him understand that the Association, as I gather from various members, is very much interested in knowing what the Council has done, so I make this motion that we have the report tomorrow in regard to the disbarment of lawyers and such other matters as in their discretion they think best to the interest of the Association to be of their own choosing, not later than 11 o'clock.

The motion was adopted.

The President:

The next order of business is the report of the Committee on Legal Education and Admission to the Bar, by A. S. Van deGraaff.

Mr. Van deGraaff then read his report.

*(Appendix.)*

On motion the report of the Committee was received and filed.

The President:

The next order of business is report of the Committee on Correspondence by the Chairman, Hon. F. G. Bromberg.



Mr. Bromberg:

Mr. President, The members of the Committee are somewhat scattered, and I requested the members to send me their views, and two of the members request that the Chairman make the report. I have not seen any of the members of the Committee to submit the report to them, and in that state of affairs it will be only an expression of opinion of the Chairman.

*(Appendix.)*

Mr. Roulhac:

Mr. President, Before moving the receipt and filing of the report, I would suggest that the Association either now or at some time, consider not only the propriety but the value to the delegates appointed this morning to the Congress to meet at St. Louis, having this report of Mr. Bromberg, and calling attention to the history of the Negotiable Instruments Act. It would have the effect perhaps of letting the people of Alabama know its history, which I am satisfied they do not, and might result in the adoption of the Act in this State.

Mr. Bromberg: Why not have this report submitted to the Committee as the other was; there ought to be a commission in this State.

Mr. Roulhac: I move its reference to the Committee on Legislation.

Mr. John London: I thought that was the former order of the Association.

The President (Mr. Troy in the Chair):

It is the duty of the Committee on Legislation to consider all such reports. This will go to the Committee on Legislation.

Mr. John London: I thought it was in the hands of a standing committee.

The President:

It is moved and seconded that the report of the Committee on Correspondence be received by the Association and referred to the Committee on Legislation. The motion is adopted.

The President here assumed the chair.

Mr. Martin:

Mr. President, I desire to make a report from a Special Committee. I was informed a few days ago by the Secretary that I had been appointed, by the President, Chairman of a committee of three, to whom was referred a resolution adopted by the Association at its last annual meeting. Resolution offered by Mr. Blakey and set out on page 22 of the printed proceedings. The other members of the committee as named by the President were Mr. Alex. T. London and Mr. Mallory. I have not been able to confer with Mr. Mallory since I learned of the appointment of the committee—he has been out of the city some days attending the national convention, I understand.

Mr. President:

I will state that that appointment was made after the appointment of the other committees because my attention had not been called to the resolution.

Mr. Martin:

Mr. President, The majority of the committee make this report.

MONTGOMERY, ALA., July 8, 1904.

*Mr. President and Gentlemen of the Alabama State Bar Association:*

The undersigned, members of the special committee appointed by the President under a resolution adopted at the last meeting of the Association (printed record, p. 22), providing "that a committee of three be appointed by the President, whose duty it shall be to report

at the next meeting a By-law governing the election of members, whereby greater restrictions may be thrown around the obtaining of membership in this Association," beg leave to report and recommend the adoption of the following resolution as such By-law:

*Resolved*, That all applications for membership in this Association shall be made to the Chairman of the Central Council at least fifteen days prior to the meeting of the Association and the Central Council shall make a full and complete investigation of the professional standing, conduct and reputation of each applicant before passing upon his application and reporting thereon.

Respectfully submitted,

W. L. MARTIN, *Chairman*,  
ALEX. T. LONDON.

The President:

I suggest, as it is now growing late, that report might be received and filed and be held over for discussion tomorrow as to whether or not it should be adopted by the Association. It is one of some importance.

Mr. W. W. Pearson: I make the motion that it take that course.

The motion was adopted.

The President:

This ends the business for to-day. I desire to say, before we adjourn, that one of the special features for tomorrow will be a short history of this Association, which has been prepared, at my request, by Mr. Troy, from its inception to the present time, and I feel very sure that each member of the Association will enjoy it.

Mr. Purifoy: I desire to offer the following resolution:

"Resolved, That nothing expressed in the reports, papers, addresses, or discussions before this Association shall be deemed as approved by the Association, except such as are expressly adopted.

"Resolved, That the first clause of this resolution be printed in each copy of the proceedings just after the title page."

I move the adoption of the resolution.

Mr. Roulhac: Will the gentleman permit that to lay over until to-morrow? There might be some discussion desired.

Mr. Purifoy: Very well.

Mr. Holloway: I have a resolution I desire to offer:

"Resolved, by the Alabama State Bar Association, That the Committee on Legislative Enactment be, and they are instructed to prepare and seek to have enacted by the next Legislature, a bill which shall have for its purpose the providing of Court Stenographers in civil and criminal cases for the various courts of record in this State."

Mr. Holloway: I will ask to let that go over until to-morrow.

The President:

The Association has heard the request of the gentleman, if no objection, that will be the order. I hear no objection.

On motion, the Association adjourned to meet at Jackson's Lake on July 9th, 1904.

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JACKSON'S LAKE, Saturday, July 9th, 1904.

The Association met at 11 o'clock, pursuant to adjournment.

The President:

The Chair will recognize the Chairman of the Central Council.

Mr. Roulhac:

Mr. President, I desire to report for membership the following names that came in too late to report yesterday: J. M. Chilton, T. Scott Sayre, Henry Reese, Emmet O'Neal and Alex. Walker.

The President:

What is the wish of the Association with reference to the report of the Chairman of Central Council? Any motion with reference to that report?

Mr. Purifoy:

Mr. President, I move that the Secretary of the Association be instructed to cast the vote of the Association for the nominees.

The motion was adopted. the Secretary cast the ballot for the Association and the President declared them elected.

The President:

The next order of business is the Report of the Committee on Legislation by R. F. Ligon, Esq.

Mr. Ligon then read his report.

*(Appendix.)*

Mr. Ligon:

Mr. President, I will state, in explanation of this report, that I received a letter from Judge Mayfield, a few days ago, stating that he would be absent from the State, and would not be present at the meeting of this Association, and requested me to submit the report of the Committee. I have not had an opportunity since the receipt of that letter to confer with any other member of the committee, but one, whom I met on the train this morning. In view of these facts, and in view of the fact stated in the report that the Legislature will not be in session for three years from this time, and there will be two other meetings of this Association prior to that time, I have deemed it best to make the report that I have just read. I will state, in this connection, that there are two matters which have suggested themselves to me on which legislation is needed, and I was glad to note was mentioned in the proceedings

yesterday, carrying into effect constitutional provision relative to use of narcotics and intoxicating liquors; the other with regard to the present law for admission to the bar. The present law is faulty in many particulars, entails a vast amount of work on the Supreme Court, and it is further apparent, from an examination of the papers now being submitted, that applicants are becoming familiar with the examining questions, and not sufficient strictness is being observed in the conduct of these examinations. It has been the custom, ever since Alabama has had a Supreme Court, to preserve a Roll of the Supreme Court Attorneys in the State of Alabama. Under the present law it is impracticable to ascertain who the members of the Supreme Court bar really are. Under the present law, when the examination paper is passed upon verbally by three members and certified to the judge of the lower court, the applicant is admitted to practice law in all the courts of the State, including the Supreme Court, upon filing his oath. It is to be presumed, of course, that the applicant, having passed the examination will file his oath as an attorney, but that presumption cannot be indulged in the Supreme Court to such an extent as to make it a matter of record and authorize the entering of the name on the roll of attorneys. The law should be amended to require the filing of the oath in the Supreme Court. As was suggested by Mr. Van de Graaff and others, the best mode—the best manner—would be the appointment of a commission, appointed by the Supreme Court, to sit at regular intervals and conduct the examination. With these supplementary remarks I ask the acceptance of the report.

Mr. Alex. T. London:

Mr. President, I do not think the fact of the Legislature

not meeting soon will hurt at all, because if the matters of legislation can be passed upon by the Bar Association at two or three sessions, we can get the thing perfected. There was a bill drafted two years ago by Mr. Weatherly, an elaborate scheme, now the second committee has passed on that same proposition. If the Legislative Committee take a proposition of that sort up again and consider it, we have mature legislation and can go to the Legislature and say this is not hastily considered, but had been passed upon two or three times. I hope the Committee on Legislation will be granted further time to examine the matters that have been heretofore referred, and those referred from this meeting, and I think the report should be made on the matters behind us as well as those that come up at this meeting. The lawyers read these reports, read the proposed legislation, and come here prepared to discuss them intelligently.

Mr. Ligon:

I would suggest that it has been the practice for a new Committee on Legislation to be appointed at each successive meeting by the President of the Bar Association.

Mr. London:

I know, and I think that is one thing which should be changed.

Mr. Ligon:

I was further about to say that it was my intention to prepare bills embodying the suggestions made and submitting them to the next Committee on Legislation.

On motion the report was received and filed.

The President:

The next order of business is a paper by Col. S. W.

John, of Birmingham, on "A Just and Fearless Judge—John Moore."

Mr. Roulhac:

This is the hour set on yesterday for the report of the Central Council.

The President:

Yes.

Mr. Roulhac then read his report.

*(Appendix.)*

The President:

You have heard the report of the Chairman of the Central Council. What is your pleasure with reference to that report?

Mr. Blakey:

Mr. President, It seems to me that this report is a magnificently written document, so far as the poetry of it is concerned, and so far as the high-toned sentiments expressed are concerned, but from that report, as it is given there, outside of the men who happen to practice law in the same court with the man who has been disbarred, against whom the charges have been made, not a member of this Association could tell who it was had been disbarred, or charges made against. It seems to me, Mr. President, that this Association, when when we go into this work, the members of this Association are entitled to know who these people are that these charges are brought against, and against whom proceedings are asked to be had, and it seems tome that the Council ought in their report to have informed this Association who these people were, and what the charges were against them, and I think that the Association ought to call on the Council for this



information, and I move, Mr. President, that the Central Council be instructed to furnish—be requested to furnish—this Association with the names of these attorneys against whom the charges have been made.

Mr. Roulhac:

I will state to the gentleman that the report refers to a list of them, attached to the report. They are classified, those who have already surrendered their license; those who have placed their license with the Council and not yet acted on, and those against whom proceedings have been instituted, three cases where charges have been made but in which sufficient time has not been allowed for answer of the respondents to come. That has been furnished the Secretary along with the report.

Mr. Bromberg:

To be printed with the report?

Mr. Roulhac:

Yes.

Mr. Alex. T. London:

I wish to state, Mr. President, that I think the Bar Association owes it to itself, and to the public, that where the licenses are surrendered, where the man has been disbarred, the greatest publicity should be given. Where a man has surrendered his license on a charge the public are entitled to know it, that an unfit man is out of the profession. I am met every day in Birmingham, and on the street cars, with the question, "Why don't you run the scoundrels out of your profession?" I have had to answer heretofore, I did not know why. The Central Council has run some of them out, and I want the public to know it for the benefit

of the profession. I have no feeling against these particular individuals, but I do think that the bar owes it to itself and to the public that the utmost publicity should be given to the fact that a man has been compelled to surrender his license.

Mr. Bromberg:

I understand that the report of the Committee is going to be printed in the proceedings, and I understand also that the reporters, if they choose, can copy the list of names and publish in the papers to-morrow. For my part, I don't know what names are in there. But I think, on this occasion, if the reading of any name is to give pain to anybody here, we ought not to read that name. I think the publicity that the gentleman desires will be furnished by the press to-morrow, and I do not think anything ought to be done to-day to disturb the harmony of our proceedings.

Mr. Wm. H. Thomas:

If I understand the chairman correctly, he incorporates in that report the list of names of the several gentlemen against whom complaint has been made and the justice of which the committee itself has not investigated. I agree with the view Mr. London has taken with reference to the other men, but I think it would be a very great hardship to give the names of the several gentlemen against whom complaint has been made before investigation of the matter has been had by the committee. I suggest that that part at least should not be given to the public at this time.

Mr. A. T. London:

I hope the suggestion of Judge Thomas will be adopted, and I move that the names of those gentlemen against whom charges have been preferred, which are now the

subject of investigation, be omitted from the exhibit to the report. I do not think it proper that a man's name should be put in the proceedings of this Association as having charges made against him which may turn out to be utterly frivolous. As for reading the names here, I don't want the names read here; we can go there and read them ourselves. I don't want to hurt anybody's feelings, but I want it known by the public in Alabama that the Bar Association is undertaking to run these people out of the profession that ought not to be in it.

Mr. Bromberg:

Why call the names?

Mr. A. T. London:

I don't want to call them.

Mr. Pitts:

Why publish them?

Mr. A. T. London: So as to let the public know it. We are put in the attitude of covering them up, and I want to show we are not covering them up, and that they are no longer attorneys in Alabama. I think the utmost publicity ought to be given in the newspapers whenever a surrender of license is made or men disbarred.

Mr. Roulhac:

Mr. President, The members of the Council thought it was their duty, of course to report the names attached to the report. Those who surrender their license it becomes a matter of record, the newspapers publish it as filed in the Supreme Court.

The President:

I will ask you if two have not already surrendered their license?

Mr. Roulhac:

Yes, sir, and the papers published the fact. Under the direction the court makes the record prescribed in the statute, and those cases where the charges have been considered the statement made to the Solicitor as required in the statute. In those cases where the charges have not been investigated, one is against a party who is at the point of death in Birmingham to-day; in those cases where we have not had time to investigate, the names are not mentioned in the exhibit because we thought it would be the greatest injustice if it was afterwards proved there was no foundation to the charge. Those where prosecutions begun are matters of record or will be when the Solicitor files the accusation. While this publicity may be useful, Mr. President, I think when it is done in the manner prescribed by law, a matter of record, and the public has access to it, where the profession will know it, that is enough. After a man has done something wrong, perhaps to some extent heedlessly, and brought to his attention, and he says yes I did it, and I surrender, the courts gave me authority to practice and I return it to them, I get out of the way, we ought not to treat him like a fallen woman, like the Puritans used to do, to make him wear a scarlet letter all his days. The object is attained, publicity is attained when he surrenders or is removed from the profession.

Mr. Pitts:

Mr. President: The gentleman has expressed my views. I don't know the name of a single one—well I heard of one incidentally and it did pain me, I was much attached

to him, he lives in a different town from my own, and I was very much pained to know that he was forced to surrender his license. I do not see why we should give publicity to anything in the world that will cause pain to any human being. Let us take the legal course. If a man wants to find out these things let him go and do it by seeing the record. I don't want to know a single one of them. When we publish this thing we are publishing to the world—and glad to publish it—that some men of the profession were unworthy. I had been reared to believe, and had believed up to this time—except from report—that when a man became a lawyer he was a gentleman in every sense of the word. I want that idea to still prevail in Alabama, and I do not want it to go out that we are rejoicing in the fact we have some men who are not worthy the name of lawyer. It would look like we were rejoicing. Let it take the legal course, and the man that wants to find out will find it out soon enough, and the neighbors of the man who has ceased to practice will want to know why have you ceased to practice? Don't let us hurt anybody's feelings.

Mr. Hundley:

Mr. President: The status of this matter is, that there is an appendix which contains the names of those who have surrendered, and of those who have not surrendered, not had an opportunity to be heard, the time not having expired.

Mr. Roulhac:

Three cases of that kind have not been investigated, without giving the names.

Mr. Hundley:

Mr. President: With all due deference to my friend

who has just spoken, there is not a fraternal order in existence, not a fraternal organization in existence, that does not publish to the world its membership when they depart from the path of rectitude and honor. While, as the gentleman who has preceded me said, it has been my idea when a man becomes a lawyer he is a gentleman, and in order that we may keep up that standard, and show to the world that we believe that, when it has been proven by a plea of guilty, by surrender of license, which is the same as plea of guilty, let us say to the world that we are an association of gentlemen, and when a man shows that he is not a gentleman that we will say to the world, he is no longer fit to be recognized as one of the legal profession, the legal fraternity of Alabama. I move you, sir, that this report be received and filed, and that the names of those who have surrendered their license be published in the proceedings of this Association.

Mr. Purifoy:

I second that motion.

Mr. S. A. Wood:

We ought not in any wise suppress any facts, or be in the attitude of apologists for lawyers who have departed from the oaths of the profession. It may be that in smaller communities it will be soon known who these attorneys are, but in the cities where we have parties practicing law who have not been licensed, and where as I have heard in one of the courts in this State the judge directed the Solicitor to proceed to disbar a certain member who had plead guilty of a certain offense, the gentleman arose and advised the judge although he had been practicing in the court all that time he had not been admitted; when it was common knowledge that he had practiced in

that court for many years. In larger cities there are a number of people practicing law who I am told have not been licensed. The question is, shall we be apologists for the parties who have been disbarred. In my opinion that report is not complete unless the list is supplemented. Suppose we go out with the statement that certain members have been disbarred or surrendered their licenses. Business men interested as much as we are, ask whom have you disbarred? Why, I don't know, the Council submitted a report but not a name was read. Why was it not read? Well, I don't know. Well then, you are an apologist, you are not willing to expose to the public those members of your profession who come and plead guilty, not willing among yourselves to even know them. I don't know any man on it I hope. I hope that I may never know. This is a painful duty, we have got to clean up the ranks of the bar in Alabama, this is a great effort in that direction, but it does seem to me, in line with what some gentlemen have said here, that publicity ought to be given to this matter, and not be apologists for any party whose name is on the list. It is a part of our duty, although painful, to have the report in full upon our minutes, and let it take such course as the press sees fit. I don't think any other course would be consistent.

Mr. Troy:

Mr. President: Mr. London stated a while ago that parties in the street cars in Birmingham had asked him why the rascals and scoundrels in the profession were not run out, and that he had replied, he did not know why. There is not any one in the profession in this State, and certainly no one in the Association, that knows any better than Mr. London, that it was not until the third day of October, 1903, that an Act, making it the duty of the

Solicitors of the Circuits to prosecute members of the Bar on charges preferred by the Alabama State Bar Association or the Central Council was approved by the Governor of this State. This is the Act that injected life and vigor into this Association, and as soon as the Act was approved, several prosecutions—as stated by the Chairman of the Central Council—were undertaken, and if those outside the profession want to know why the profession has not been cleaned of its scoundrels, they can be informed that we did not have the proper machinery to eject them from the profession.

Mr. London:

Mr. President: I desire to state that I regard this report of the Central Council as the greatest single act that the Bar Association has ever had before it. It is not the first time that action has been taken in what I regard as the proper line, and I don't propose to be put in a false position before the Association. I stated the inquiries made of me in the street car, I stated that the Central Council—I have been recently able to state, I am glad to say, that the Central Council were investigating and it had resulted in disbarment of several men utterly unfit. The Bar Association is doing something, it has the power to do something, and it has effected what I regard as the greatest single movement that the Association has ever been able to effect. I have no feeling against those men. I have not heard the name of but one man in this connection, and certainly I have nothing against him. I do not want to hurt his feelings, I have not done it, he has hurt himself, I did not do it. When he comes into the court under the Act of the Legislature and admits that he has done these things and surrendered his license—

The President:



Can I ask a question?

Mr. London:

Certainly.

The President:

I happen to know two members have been disbarred by the order of the Supreme Court, and other members of the profession have handed in their resignations, but the Central Council has been unable to get the order of the Court because of the fact that the Court has not met since the resignations were handed in. Should there be given publicity in the newspapers to these resignations until there is a formal order of the Court disbarring them from from the practice of the profession in this State?

Mr. London:

I will state in answer to that, that even after the plea of guilty he may change his mind. I do not undertake to specify what cases shall be given publicity, I confine my statement to where the man has surrendered his license, or been disbarred. I stated those two cases. That the utmost publicity should be given to it, and I did it on the ground as stated by Mr. Hundley that we are simply fair to ourselves. Certainly it is no pleasure to me to see a man fall, I don't care who he is, but if he has fallen and gotten down out of the state he ought to occupy as a lawyer, I submit that the public ought to know it.

Mr. Pitts:

Suppose you have a friend that has fallen, do you think it your duty to publish the fact that he has fallen? Every member of this Association is a brother, do you think you ought to go out and publish to the world that your brother has fallen? Let them get it in a legal way.

Mr. London:

I don't think that being a brother of the legal profession imposes upon me the duty to screen in any respect, or apologize in any way, for a man who departed from the plain, straightforward, honest rules prescribed for a lawyer. I do not impose the penalty on him, he did it himself. Don't we owe some duty to the profession? Is it all a matter of friendship? Are we to hush it up because some man is our friend?

They say there are four or five of them, and I don't know who they are, and if you go to Birmingham, as suggested by Mr. Wood, you don't know who is a lawyer. Men practice law in Birmingham every day who have no license, as I am informed, but I do not state it as a fact. By what means have the public to be advised, and nobody knows better than my friend Judge Pitts that that class of men are calculated to do more injury to the profession and to the community than all the rest together. It is nothing more than protecting the character and standing of the profession. Certainly we ought to be willing to do what is required as a plain duty to give publicity to the facts where the guilt is established and the judgment pronounced.

Mr. Hundley:

Mr. President: It strikes me that the objection to this matter is the difference between tweedledum and tweedledee. It is stated that the names are in the report, and a person can go to it and publish it. Let us imagine the writing out of the proceedings here today, in the press on tomorrow, and if it states the bare facts, and I have no doubt it will, it will read something like this: The report of the Central Council read to the Bar Association contains certain names of those who had surrendered their

license. Thereupon a motion was made that the fact of their plea of guilty and surrender of their license shall be included in the proceedings of the Association, but on casting up the vote the Association voted down this motion and the names were not included in the proceedings, as having been disbarred. But the press, that great purveyor of what is of interest to the public is enabled to get at the facts notwithstanding the action of the State Bar Association, and the press for the benefit of the general public takes pleasure in stating that the gentlemen referred to and the following. It strikes me that is not the proper way to do it. If these men are unworthy—and I do not have the honor of acquaintance of any one of them—I don't know their names—and it may be somebody is involved that I do know, if so, I have no knowledge of it now, nor do I care, but the point I make, and the purpose of my motion is, that as to those members who have confessed their guilt by surrendering their licenses, that this Association shall put itself on record by its minutes and proceedings by making that fact appear affirmatively upon its proceedings..

Mr. London:

You mean those who have been disbarred.

Mr. Hundley:

Yes, of course I mean that.

Mr. Blakey:

I wish to withdraw the motion I made, and second Mr. Hundley's motion.

The President:

The chair would hold that the appendix to the report which contains the names, is a part of the report, and it

will be published in the proceedings of this meeting without any motion at all. The chair would hold that that appendix is a part of the report, and the only question before the Association now is, whether that appendix shall now be read or simply published along with the balance of the report. It forms a part of the report and will be published.

Mr. Blakey:

Along that line I want to say this: The proceedings will be published next January or February. The average member will take the report up and glance over it, the report will be in the appendix of the proceedings. Two-thirds of the members will not look back to see what it is, and the probability is never see the names at all. I happen to know one instance where a man has surrendered his license and has been disbarred by his own voluntary act, and in the very community in which he lives, and in which he had practiced, there are lawyers today who are in the active practice who do not know that man has been disbarred.

The President:

Is there anything before the Association? Did the gentleman withdraw his motion?

Mr. Blakey:

Yes, sir, and to second the motion of Mr. Hundley.

The President:

I hold that it would be useless, because the appendix will be published as a part of the proceedings.

Mr. S. A. Wood:

I call for the reading of the appendix.

The President:

Now that is the question.

Mr. W. H. Thomas:

Mr. President: I desire to submit a motion that the appendix be not read and be not published.

Mr. Bromberg:

I call for a division of that question.

Mr. Hundley :

Mr. President : I am not very familiar with the rules, but I make the point of order that any member has the right when a matter is pending upon which he is called upon to vote, that any member has a right to demand the reading of the pending question, and I therefore ask for the reading of the appendix for information, before I cast my vote.

Mr. Mullins :

Mr. President : I make the point of order that the motion of the gentleman from Huntsville is pending, to receive and file the report.

Mr. Hundley :

Mr. President: I rise to point of order : The President has declared my motion out of order and the question is upon reading of the appendix for information.

Mr. Mullins:

I did not so understand the Chair to declare the motion out of order.

The President :

I held that the motion was unnecessary because the proceedings would be published.

Mr. Hundley :

Mr. President: I withdraw the motion, and ask for the reading of the appendix for information before I cast my vote.

Mr. Rushton :

Mr. President: I suggest that the report be sent around to those who seem anxious to know what is in it. There are others of us who do not care to read it.

Mr. Hundley :

Reading for information is always in order, and any member has a right to have it read from the clerk's desk.

The President :

The Chair is in doubt whether the motion of the gentleman from Huntsville is correct or not, and he asks for information from the Association on that subject.

Mr. Bromberg :

Mr. President: I would suggest to the gentleman from Huntsville that he do not press a motion that must be disagreeable to some. I do not see why any one wants to know the names right now, when he can get them to-morrow, the newspapers will have them. When we come together for social pleasure there ought not to be anything disagreeable. Some may be connected by friendship with names that might be read. The Committee is right in not reading the names. It will be published by the newspapers, and let us not hear the names to-day.

Mr. S. A. Wood :

Mr. President: I have one request to make of the Central Council, that they withdraw the appendix or have it read. I am perfectly willing for them to withdraw it. I hope the Central Council will withdraw the appendix unless they are willing to give it in toto.

Mr. A. T. London:

Mr. President: The Central Council has made a report referring to an exhibit which was submitted with the report. I submit that that exhibit cannot get out of the Secretary's hands, except by a vote of the Association. It is now before it, and a part of our records, and I submit we have a right to have it read to know what is before us.

The President:

The Chair is in doubt as to the point of order, and he calls upon the Association to determine that point for him.

Mr. Coleman :

Mr. President: There was a motion as I understand that this appendix be not printed as a part of the proceedings, and be not published.

The President:

The gentleman raises the point of order that it does form a part and can be read, and the Chair is in doubt.

Mr. Mullins :

Mr. President: I want to make another point of order: I would like to know if the exhibit is physically in existence.

The President:

I suppose it is.

Mr. W. W. Pearson :

It seems that this Association has appendicitis!

Mr. Martin :

Mr. President: I would like to ask for some information: I want to know whether that appendix contains the names of any other attorneys or ex-attorneys than those

who have been disbarred, or have surrendered their license?

Mr. Roulhac :

It has the names of two against whom proceedings have been directed.

Mr. Martin :

That part ought not to be published. I don't think there can be any difference of opinion on this proposition that the report ought to contain the names of those who have surrendered their license, or been disbarred. All the rest ought to be omitted so far as the names are concerned. The names of those against whom proceedings are pending ought not to be published.

The President:

I understand that forms a part of the report.

Mr. Martin :

I don't think that part of the report ought to be published. I move that so much of the appendix as relates to pending prosecutions be omitted from the publication.

Mr. Ligon :

That is a suggestion I was about to make.

Mr. Pearson :

I second that.

The President:

The Chair would hold that also out of order pending the motion of the gentleman from Montgomery that the appendix be not read.

Mr. Hundley :

Mr. President: I make the point of order, that a motion



not to read the appendix would be out of order, because you have to suspend the rules to do it. Under the rules of general parliamentary law which the Association has adopted, when a committee reports it cannot be without a suspension of the rules.

The President :

The Chair is in doubt about that, and will take the sense of the Association on the subject.

Mr. Pettus :

Mr. President: I hope, gentlemen, that you will not do any injustice in this proceeding. The motion of the gentleman from Madison covered the whole ground as I understand he wanted it to be done at first. He seems to have changed his mind on the subject. I am sorry that he withdrew his motion. I renew it that the names of those convicted or who have surrendered their license shall be published, and nothing else, the name of no other person in that report. It would do gross injustice to a man, he may have been maliciously accused and the Council is examining into it. You might do gross injustice to divers persons. If the gentleman from Madison will vote for his own resolution, and not insist on his absolute pound of flesh.

Mr. Hundley :

Mr. President: If the gentleman will permit one interruption: I stand by my original resolution, but I was fearful that the motion I made would be beaten, and I cut that off by calling the matter back to its parliamentary status, that we proceed to the reading of the report, and to ask unanimous consent that that portion of the report which referred to those who had not been disbarred,

or had not surrendered their license, do not be read or embraced in the report. I wanted to get it in proper parliamentary attitude. I do not want any man's name included in this, until he has been proven guilty or confessed his guilt. As a lawyer I do not want any one condemned until he has had his day in court, and I do not want any name in there, directly or indirectly, who has not been convicted.

Mr. A. T. London:

I second the motion of the gentleman from Dallas.

Mr. Callahan :

I rather expected this kind of performance, but did not expect it so early in the day.

Mr. Van de Graaff :

Mr. President: I have served as a member of that Council. The duties of that Council have been painful, and I think the gentlemen who have served with me, unite in the expression. I do not think anything should be done here without careful consideration, and I do not think the last word has been said as to the merits. We have had before us, the father—himself a member of this bar, I suppose the oldest or one of the oldest in the State, a man who had borne a name honored throughout this State; we have had requests from wives. In this character of case, as in every case, the suffering, the blow, must fall upon others who are innocent. According to my conception of the law under which the proceedings are instituted, I believe it is the policy of the law to permit of a quiet retirement from the profession by the party accused. It is made the function exercised by the Central Council, it on the examination of the evidence *prima facie* of the existence of the charges, he is given opportunity to sur-

render voluntarily his license at this stage of the proceedings without institution of proceedings in court. I submit a fair construction of those provisions is, that it is the policy of the law to allow members of the bar so charged to simply withdraw without the publicity of a charge lodged against them. I believe that to be, having reference to all the bearings of these proceedings a wise policy. I believe it to have been partly the cause, the avoidance of publicity, that some of the gentlemen may have withdrawn from the bar. I believe that the desire in a sense to avoid notoriety for their family, the proceedings in a trial, probably operated upon the mind of some of the lawyers who have withdrawn. Believing that, and having seen before our Council this old white headed father pleading for his son—

The President:

Had his son with him?

Mr. Van de Graaff:

Yes, sir, had his son with him before us. I believe that the true view of our duty to our Association is to put out the unworthy, to secure their withdrawal from the bar, but when we have done that, to stop, not to publish in our records here that ought to be a part of the history of the legal profession of the State a name which has been honored among us for years and generations. He is disbarred. The records of the court show him deposed from the practice, is not that enough, must you brand the man through life and all those who are of kin to him to share that brand with him, as suggested a red letter upon him? I say not, we have done all we ought to do when we remove him.

Mr. Armstead Brown;

Mr. President: If the position be taken that the action of the Central Council shall not be reported to this Association we are conferring upon the agent greater power than the principal possesses. That would give plenary power, a dangerous power. Knowing as I do something of the high character of the present Central Council I would be perfectly willing to trust the character of my own brother into their keeping, but if in the future, it were possible that other men should get on that Council whose character were less lofty, the result might be dangerous. I do not want a star chamber created greater than the body which created it.

Mr. Mullins :

Mr. President: This is a delicate proposition. I may be a little out of order, but it seems to me that this matter could be wisely referred to a special committee, this report be referred to a special committee to be raised now, and to report this afternoon. It is confessed that parts of that report ought not to be made public. There is some weeding out that ought to be done in any event. I will not make a motion, but I make the suggestion.

Mr. Hundley :

Mr. President: The motion of the distinguished gentleman from Dallas covers the very point that the gentleman suggests, confines it to the cases where plea of guilty entered and surrender of license.

Mr. Callahan :

Mr. President: I don't care to discuss the features of this report as to what shall be done with it, but when this vote is taken it disposes of this report in some way, and I have a few suggestions, if you will be a little patient, that I would like to make in this matter. We seem to be very

much pleased that we are in position to begin proceedings by law against parties who offend, but I fear we have not struck the rock that is in the way, which is the enforcement of that law. We are not going to find men every time so guilty that they are convinced of it themselves and going to deliver up their license, we are not going to find them every time willing to give up without a fight. When we get to throwing the line around the biggest steer in the crowd we will have a tussle. The solicitor in a particular county begins a proceeding. I don't desire to reflect upon the ability or the character of the solicitors of this State,—but mark you, when you catch one of the big fellows, which ought to be done if he is guilty, catch the big fellow and frighten the little ones and they will stop—but when you catch him you will have a fight on your hands. He is going to have friends, influence and popularity before the jury in the county where he is to be tried, and he may have counsel, and doubtless will have the ablest talent that he can get, and there is the solicitor, single handed and alone to combat with that man's influence, his personality, his friendship and his counsel, and I submit while I approve of the law that the solicitor ought to bear the official burden and responsibility of the matter as being the official head of it, I believe that it is the duty of the Bar Association to furnish that solicitor with such aid in the way of counsel that he may desire, or in the discretion and judgment of the President of the Bar Association is necessary or needed. Now we are not all infallible, you take the young solicitors, having less experience than others, and the man to be tried has power and influence, the question is, is he able under those circumstances to stand out single-handed and alone and cope with the conditions that confront him. I think the Bar Association

ought to furnish additional counsel in any case where it may be needed, and I make that suggestion.

The President:

You have heard the motion of the gentleman from Dallas. Are you ready for the question? All in favor of the motion of the gentleman from Dallas will say aye, and and those opposed no. The ayes have it and the motion prevails. That part of the appendix to this report having reference to those members who have been disbarred and those who have surrendered their licenses, will be read.

Mr. Roulhac:

Mr. President: I ask leave of the Association, as the adoption of this motion will necessitate some change in the framing of the exhibit to the report, that that may be made at the afternoon session. The report is classified as I stated in the outset, to those surrendered and disbarred; those surrendered that we have in hand, and the three where prosecutions have been begun by the Central Council. The last are not to be read. There was a statement without giving names in three instances where charges are pending.

Mr. Hundley:

I wish to ask a question of the gentleman. Do I understand him to say it is impossible for him to read that portion?

Mr. Roulhac:

No, I can read that.

Mr. Hundley:

Some of us will not be here this afternoon.

Mr. Roulhac:

Those who have surrendered their licenses and been disbarred are Gordon Macdonald of Montgomery and E. K. McGregor of Morgan county. Those whose surrenders are in the hands of the Central Council are: John J. Moore of Birmingham and John W. A. Sanford, Jr. of Birmingham.

The President:

What shall be done with the report?

Mr. Hundley:

I move it be received, filed and approved.

The motion was seconded and carried.

The President:

The next order of business is a paper by S. W. John Esq., on "A just and Fearless Judge—John Moore."

Mr. John then read his paper.

*(Appendix.)*

Mr. Alex. T. London:

I offered a resolution yesterday, which was made a special order for to-day at noon.

Mr. Ligon:

I make a motion for a recess of ten minutes.

The motion was carried.

#### AFTERNOON SESSION.

The President:

The matter now pending before the Association is the resolution introduced on yesterday by Mr. Alex. T. London of Birmingham. The Secretary will now read the resolution.

The Secretary then read the resolution.

WHEREAS, By reason of the large increase in the business in the Federal Court for the Northern District of Alabama the dockets are so congested as to amount to a practical denial of justice and provision for an additional judge is imperatively necessary—therefore

*Be it resolved*, That it is the sense of this Association that an additional Federal District and Judge should be provided for in this State at the earliest practicable day.

*Resolved further*, That the Central Council of this Association be and it is hereby instructed to take all necessary steps to carry out the provisions of the foregoing resolution.

The President:

You have heard the resolution, what is the pleasure of of the Association with reference to it?

Mr. Bromberg:

I would like to ask whether Judge Jones concurs with that?

Mr. A. T. London:

I desire to say that I was unable to see Judge Jones as he was out of the State. I will state that I have talked with Judge Jones on the subject of this resolution, and it is not in opposition to any views he then expressed. I have not submitted the resolution to him as I would have done had he been in Montgomery, but I know the conditions are just as stated in the preamble to that resolution. My friend Mr. Wood is quite familiar with the condition of the dockets in the Federal Court in Birmingham. As I stated before, I don't believe the best judge in Alabama can sit in that court and dispose of the cases at issue there in twelve months.

Mr. S. A. Wood:

The constitution provides that the writ of habeas corpus shall not be suspended; up our way it has been suspended.



I do not believe any one judge in the world could dispose of the business that has accumulated in that district. At one time last year there were four hundred cases on the common law side of the docket. It has just been impossible on account of the crowded condition elsewhere, for the judge to do his duty. He has cases involving from a small sum up to millions of dollars. I do not know in what way we can get relief, but I hope the Bar Association will help us. I believe this resolution, expressing the views of the lawyers of the State, ought to pass. It is practically a denial of justice in the present condition of the docket.

Mr. Blakey:

I move that the resolution as offered by Mr. London be adopted by the Association.

The motion was adopted.

The President:

The next order of business is the Report of the Committee on Publication by the Chairman, Thomas M. Owen, Esq.

The Secretary stated there was no report.

The President:

The next order of business is Report of the Committee on Grievances, by the Chairman, A. G. Smith, Esq.

The Secretary stated that there was no report.

The President:

I requested the Secretary of the Association, who has been Secretary ever since it has been an Association, over twenty-five years, to prepare a short history of the Association. He has prepared it at my request, and he will now read it to the members of the Association.

Mr. Troy then read his paper.

*(Appendix.)*

The President:

What is the pleasure of the Association with reference to the paper which has just been read by the Secretary?

Mr. Sternfeld:

Mr. President: I think that is a very valuable paper on account of its historical references. I understand that there is only one full set of reports, and I move that that paper be received and published in the proceedings.

Mr. Purifoy:

I would like to state that the gentleman is mistaken about only one set. I am the fortunate possessor of a full set of reports. I understand I am the only other member having a full set of reports.

Mr. A. T. London:

Isn't that the order of the Association that the reports are received and filed?

The President:

They are subject to discussion.

Mr. A. T. London:

I understand, but they are received and filed and published. I don't object to the motion.

The motion was adopted.

The President:

The next order of business is a paper by F. M. Purifoy, Esq., on "Growth and Development of the Scope and Power of Trust Companies."

Mr. Purifoy then read his paper.

*(Appendix.)*

Mr. Hundley:

I move the paper take the regular order, be received and filed and published in the proceedings.

The motion was adopted.

Mr. Faith:

Mr. President: We had a trust company in Mobile, but I have not yet heard of any one having a trust company act as a trustee or guardian or administrator, and so far as I know in Mobile it has been a failure in that respect, that is, nobody would have it act as a trustee. I don't know how it is in other cities. Personally I am opposed to a corporation acting as an administrator or executor, I think it takes from the lawyer one of the fields of his profession where he advises his clients, and gives to the attorney of the trust company the guidance of that estate. I think it is to the interest of the lawyer to oppose that.

Mr. John:

Mr. President: I am a little surprised that he says nobody in the City of Mobile will trust his trust company.

The President:

It is a good trust company.

Mr. John:

I have no doubt. I will give you an illustration of a case which happened recently, it shows that the gentleman's fears are not well grounded. There was a trust created in Dallas Chancery Court a good many years ago, and Mr. H. Smith was named as trustee. He had

agreed to accept the trust created by will, and therefore he felt in conscience bound to execute the trust, and he did for twenty years. But pressure of business and advancing years on himself admonished him that he could not longer execute that trust, and therefore he cast about to have somebody, on the ground in Alabama, to execute that trust in the spirit in which it was created, and he requested me to select a trust company. That was done, and the trust company so far as turning the business over to their particular attorney, continued it with the attorney who advised the trustee, and continued as a trust estate from the beginning. So you have substituted for a person in that case who is getting advanced in years, and unable to attend to the duties of that trust, a company live, active and on the ground and attending to the business and with more profit to the beneficiary than Mr. Smith did. I think it fills a sphere, renders a service to the community on which it can rely. We don't know how long the matter may run, but no matter how long it runs, so long as that institution stands, more promise of standing than any man can hope to live, that trust will be carried out properly according to direction. I am glad there are such institutions. I can say I have no stock, but I know the way that the business is transacted.

The President:

The next order of business is the report of the Committee on Local Bar Associations by the Chairman, Phares Coleman, Esq.

Mr. Coleman then read his report.

*(Appendix.)*

Mr. Bromberg:

Mr. President: With everything that has been said in

that report confined to suggestions and advice I agree, but there is a strange inaccuracy of statement of fact. We have had for four years past a very live Association in the city of Mobile which includes nearly every member of the Bar. For two years I was President of it, now Mr. Bestor is. We have established a fee bill and Code of Ethics. The fee bill applies all the time in cases arising in a court in establishing what is the proper fee to charge. Of course those questions come up very seldom in the other courts. Sometimes what is a reasonable fee for collecting a note enters into a contract. We have had three delightful banquets, and that perhaps is as desirable as anything else to bring the members together once a year, and also to hold them up to the Code of Ethics and the fee bill. I think the report should be corrected to except the City of Mobile, where you state not in a single city such an Association exists. I was the first President, was re-elected, declined further nomination and Mr. Bestor is now serving as the President.

Mr. Coleman:

I am very glad to be informed, and I shall ask the privilege of amending the report of the committee.

The President:

The report will be filed and published after revision.

The President:

The next order of business is report of the Committee on Legislative Enactment, by the Chairman, Hon. Geo. P. Harrison.

The Secretary:

Mr. President: General Harrison stated to me on yesterday that but two bills had been introduced into the

Legislature, at the suggestion of the Alabama State Bar Association, both of which he advocated in the Senate. One was the bill in reference to disbarment proceedings which he succeeded in having passed; the other was with reference to the admission of members to practice law. The latter failed of passage. That would be his report if he were here. He asked me to make this statement.

The President:

The next order is the election of officers, and I will ask if that committee is now ready to make its report.

Mr. Blakey read the report of the committee as follows:

*Mr. President:*

Your Committee appointed to nominate officers for the Association for the ensuing year respectfully report as follows:

For President—Hon. Thos. R. Roulhac, Sheffield.  
1st Vice President—Hon. Geo. P. Harrison, Opelika.  
2nd Vice President—Hon. D. P. Bestor, Mobile.  
3rd Vice President—Hon. W. S. Thorington, Tuscaloosa.  
4th Vice President—Phares Coleman, Esq., Montgomery.  
5th Vice President—C. R. Bricken, Esq., Luverne.

Secretary and Treasurer:  
Alex. Troy, Montgomery.

Executive Committee:

S. H. Dent, Jr., *Chairman*,  
B. P. Crum,                      Gaston Gunter,  
Wm. M. Blakey,                  Alex. Troy, *ex-officio*.

Central Council:

W. W. Callahan, *Chairman*, Decatur,  
A. S. Van de Graaff, Tuscaloosa, Chas. P. Jones, Montgomery,  
S. D. Weakley, Birmingham, John London, Birmingham.

We further report a resolution of thanks to our most efficient and courteous Secretary and Treasurer for the faithful manner in which he has performed the duties of his office and looked after the welfare

of the Association—and also the retiring President for the faithful discharge of his duties.

Respectfully submitted:

WM. M. BLAKEY, *Chairman*.  
HENRY PITTS,  
ALEX. T. LONDON,  
W. W. CALLAHAN,  
LAWRENCE COOPER.

Mr. Rushton:

I move Judge Pitts be instructed to cast the vote of the Association for the officers nominated by the Committee.

The motion was adopted.

Mr. Pitts:

Mr. President: I will state that I have cast the vote of the Association and that each and every one of the nominees has been elected.

Mr. A. T. London:

I have a resolution I desire to offer:

*Resolved*, That the thanks of this Association be and they are hereby tendered to the retiring officers and Central Council and Executive Committee for the valuable services rendered by them during the past year.

The resolution was adopted.

The President:

The next order of business is the consideration of the report that was made on yesterday by Mr. Martin.

Mr. Martin:

Mr. President: For the information of the gentlemen who were not present yesterday, I will state that the gentlemen appointed to make this report, a committee of three—providing for admission of membership to the Association—the gentlemen appointed were W. L. Martin, Chairman, Alex. T. London and H. S. D. Mallory. Mr.

London and myself had a meeting yesterday, and agreed upon the report which was read yesterday.

Mr. John London:

If that report indicates any opposition to the way in which members were formerly admitted, we are not informed of any improper method. My information is, that we have had a very satisfactory membership, and very few have been admitted that ought not to have been admitted. It seems to me, it should be the desire of the Association to encourage them to come in, and not throw obstacles in the way, and unless some reason is given, I don't think the amendment to the By-Laws should be adopted.

Mr. Blakey:

I will explain for the benefit of members who were not here at the last meeting of the Association. Heretofore it has been the custom for names to be filed with the Chairman of the Central Council, and he would call an informal meeting after they got to Montgomery. These gentlemen shown to be practicing attorneys, and nobody knew anything about them, they said all right. I will illustrate my point by an instance which occurred a few days ago. I was in the Secretary's office and Mr. Troy handed me a letter, which was an application for membership. I read the letter, from a personal friend of mine, a man I have known for years. I said, that will not do to submit to the Association. Why? I said that man is black listed for collecting money belonging to clients and refusing to turn it over. It has been reported to me there are several instances where he has collected money and it could not be gotten out of him: If his name is suggested to the Association, I, his personal friend, would



becompelled, if I did my duty to the Association, to oppose his nomination. We ought not to be put in that attitude. If these names are filed with the Council two weeks in advance the Chairman can very easily write to the members of the bar practicing in the same county with the man making the application, and ask them to inform him if there is any objection to allowing that man to become a member of the Association. If those members there are satisfied the members of the Association should be. But on the other hand, very frequently names are proposed for membership in the Association when there is not a man present in the Association who happens to be practicing at the same bar with him, and the members of the Association do not know anything about him. I think there should be some investigation made beforehand. In fact there have been two or three instances where men have been proposed for membership and elected, where afterwards I have found out things about them, which if I had known in advance, I would have opposed their election. I think it is only fair to the Association, when we are making the effort to clear the bar of the State, that some investigation should be made.

Mr. Alex. T. London:

I would like the Secretary to refer to the last meeting of the Association, which calls for this report.

The Secretary read the printed proceedings of the from last annual meeting, as follows:

*Resolved*, by the Alabama State Bar Association, That a Committee of three be appointed by the President, whose duty it shall be to report at the next meeting a By-law governing the election of members, whereby greater restrictions may be thrown around the obtaining of membership in this Association.

Mr. Alex. T. London:

Mr. President: I take it when the committee undertook to carry out what it regarded as instructions from the Association, that it was our duty to enforce some restrictions for the reason that it had been made apparent at the last meeting there was a necessity for it. I am not like my brother about being without knowledge. I was somewhat like my friend Blakey in the knowledge that some members of the Bar Association had been elected that I did not think I would have picked. I suppose it was for that cause that the committee was raised, and I do not think the restrictions by the proposed By-Laws are harsh in any measure, or should keep anybody out who is entitled to come in. I think it is prudent and wise that the names should be given in advance of the time of the meeting. Exceptional cases may arise. It is clearly within our own province to suspend the By-Laws where we find it a hardship.

Mr. Martin:

Mr. London is correct when he says that the committee felt instructed to report a By-Law. So far as I am individually concerned, I am free to say that I had not discovered any necessity for any legislation on that question, but being appointed on that committee, with instructions to report a By-Law, we thought it our duty to report that By-Law, and I made inquiries, we considered this question as to whether that By-Law requiring applications to be made fifteen days before the annual meeting, would prevent admission to membership at the annual meeting without previous application, and the conclusion was as suggested by Mr. London, that the Association had power to suspend the operation of any By-Law. I would oppose any By-Law that would tie the hands of this Association;

that would prevent the Association from admitting to membership while in session by unanimous vote, or three-fifths vote. I understand that to be the effect of the resolution, that it may be suspended by a vote of the Association at any time.

Mr. Alex. T. London :

Unanimous consent I presume it would be, and if there is one objection I don't think the man should be admitted.

Mr. Martin :

With that understanding, that a man may be admitted at any time by a vote of the Association.

Mr. Coleman :

Mr. President: I don't see how there can be any possible objection to the By-Law as reported. The only difference is, heretofore it was a matter of course that the man's application, when he made application, he was elected a member. Now the Central Council is directed to investigate that member. That is strictly in accord with the construction which defines eligibility. Of course the ascertainment, as to whether or not he is a member of the bar in good standing, carries with it an investigation by the Central Council, and as I understand the By-Law it is not even necessary to suspend the rule. A man's name is admitted to the Central Council this morning. They can make all needful investigation by this afternoon, and for that reason it seems to me that the By-Law is in strict accord with what the Constitution contemplated, and it would not be necessary to suspend the By-Laws or Constitution, and it seems to me it should be adopted.

Mr. John London :

Mr. President: I understand that the new By-Law re-

quires application to be made fifteen days prior to the annual meeting of the Association. If this Association should go some where else, say to Birmingham for instance, and the local bar desire to become affiliated with the Association because it was there, it seems to me it would be right and proper to have them come in, unless it is found that the present arrangement does some injury to the Association, we had better leave things as they are. If the Central Council recommends a lawyer for membership in this Association *prima facie* he is all right. If not probably some member on the floor will vote against him.

The Secretary :

Mr. President: I know it is a fact that at the meeting of the Association at Mobile, we had a great many applicants acted upon at that time, some of the best members we have. I think if this By-Law is adopted and enforced, and the Association is held elsewhere than at the city of Montgomery, it may have injurious effect. The effect will be to keep a number of the members of the bar from applying for membership who would otherwise come into the Association. I move that this report be laid upon the table until the next meeting of the Association.

The motion was adopted.

Mr. Troy :

I move we take a recess for one hour for dinner.

The motion was adopted unanimously.

The Association re-assembled after dinner.

(Stenographer missed first part of the proceedings. When he entered Mr. Troy was addressing the Association, and the following was said by him after the arrival of reporter :)

Mr. Troy :

Mr. President . The large list of members taken in, and the increased interest in the Association, shows the effect of that legislation. The Association has held meetings, from time to time, and the roll of its members show that some of the most distinguished lawyers of the State have been members of it since its organization. To be continued Secretary, and to be associated with this body of gentlemen, the leading lawyers from every part of the State is a very great compliment to me, and I desire to thank you again for the honor again conferred upon me.

The President :

I desire to thank the Association for the distinguished honor conferred on me last year in making me President of the Association. I also desire to thank all the officers of the Association, particularly the members of the Central Council, Secretary and Executive Committee for their kind assistance during my administration of the office.

Mr. Holloway :

Mr. President: I introduced a resolution yesterday afternoon, but in view of the report of the committee on legislation to-day, I think it had best stay where it is.

Mr. Blakey :

Mr. President: I have a resolution which should have followed the report of the Central Council. It is well known to the Association, that the duties of the Central Council, by reason of increased number of cases they have to investigate, has been considerably increased, and the members of the Council have devoted a great deal of time, and at some expense, in attending the meetings and investigating the cases. It is not fair to the members of the

Association that they should be required to give their time to the business of the Association, and at the same time to bear their own expenses. The purpose of the resolution which I propose to offer, I submitted yesterday to Judge Roulhac who is the present Chairman of the Central Council, and it meets his approval.

I will now read the resolution.

*Resolved*, That whenever the members of the Central Council shall be called by the Chairman thereof to attend a meeting of the Council for the purpose of considering a complaint against an attorney for the purpose of instituting disbarment proceedings, the actual expenses incurred by the members of the Council while attending such meeting shall be paid out of the treasury of this Association upon the certificate of the Chairman of the Central Council to the Secretary and Treasurer.

I move the adoption of that resolution.

Mr. S. A. Wood:

I think it should be actual expenses not exceeding so and so. It might sit thirty days, and it would be a draft on the Association. I suggest there should be a maximum, I would say twenty-five dollars.

Mr. Blakey:

I am willing to accept that amendment.

Mr. Callahan:

Mr. President: As a member of the Central Council, I simply desire to state to this body that so far as I am concerned, I have no desire for that resolution. I am willing to expend what may be necessary in making these trips myself.

Mr. C. P. Jones:

Mr. President: I have been a member of the old Council, and some one told me I have been unfortunate enough to

be one of the new. I join my brother Callahan in saying that so far as I am concerned, I will attend as best I can, and ask no resolution from this Association.

Mr. Alex. T. London:

Mr. President: As I understand, it is not because the Central Council requested this thing. I do not think it is anything more than fair that we pay the gentlemen their expenses. I insist that the resolution be adopted.

Mr. Roulhiac:

Mr. President: Mr. Blakey submitted that resolution to me yesterday, and I thought it was manifestly proper. The meetings last year were at my office in Birmingham, and it was no expense to me, but it has been an expense to others, and it is but right that they should have their actual expenses. My friend Mr. Callahan will find that he will be beset with a great deal of correspondence, questions to answer, things of that sort, and he will have to exercise patience—which with the Irishman is rather a difficult thing to do—and when he has to leave his office, go from home, I honestly think that the expense of the members who have to come from a distance—hotel bill—of course that don't embrace anything more than shelter, no extraordinary or incidental expenses. Those expenses ought to be met, it is but fair, it is but just, and I think the Association ought to adopt that resolution despite the offer of the gentlemen to do it for nothing.

The President:

Gentlemen, you understand the question. All in favor of the resolution, as amended by the gentleman from Jefferson, will say aye and those opposed no.

The resolution was adopted.

Mr. Blakey:

There is another resolution which is suggested by the remarks of Mr. Callahan this morning, which made it necessary to amend one of our By-Laws. We have a By-Law with reference to disbarment, which under the old system required the Central Council to appoint a member of the Association to prosecute disbarment cases. Under the new system the members of the Central Council have not that authority, because required to be prosecuted by the Solicitor. This provides that when the members of the Central Council deem it necessary or expedient, they shall appoint a member of the Bar Association to assist in prosecuting, and it shall be his duty to do so. I now offer this resolution:

*Resolved*, That whenever the Central Council shall direct the prosecution for disbarment of an attorney, if in their judgment it shall be necessary or desirable that assistant counsel should be appointed to assist in the prosecution of said cause, they shall appoint a member of this Association, with instructions to assist in such prosecution, and it shall be the duty of such member to comply with such order of the Central Council, and any member of this Association so appointed who shall, without good excuse, fail or refuse to assist in such prosecution, shall be expelled from the Association. And the Central Council shall report to the Association all such failures to prosecute, and in the event of failure of any attorney so appointed, the Central Council shall appoint some other member of this Association to act as such assistant prosecuting attorney.

Mr. Wood:

I move the adoption of the resolution.

The Secretary:

Mr. President: I will ask if it would not be necessary to amend the By-Laws before we can pass the resolution. By-Law No. 10, in reference to disbarment provides,



Mr. Alex. T. London:

Mr. President: I want to ask this question, whether under that resolution the Central Council has not the power to appoint counsel.

The motion was adopted.

Mr. Coleman:

Mr. President: The report of the Committee on Legislation brought to the attention of the Association the fact that the Legislature only met every four years, and it seems to me that the By-Laws of our Association should be so amended that the Committee on Legislation should have a term of office of four years, commencing with this next year by the appointment of the new President. As it stands now the By Laws provide that the Committee on Legislation shall be appointed annually. It has been brought out in the discussion, one of the benefits to be derived was mature deliberation of all questions proposed for legislation. If that be true, the beneficent results would be very much more apt to be attained by having the same committee throughout that whole term, and for that reason I think it would be very wise for us to amend our By-Law in such a way, that the Committee on Legislation, would hold four years from date of appointment, it being understood that the incoming President appoint the committee. For that reason I make the motion.

Mr. T. Scott Sayre:

I move to amend the resolution by providing for the appointment of the present committee to hold office for two years, which would be up to the holding for the next Legislature, and then, thereafter, to be appointed for four years.

Mr. Coleman:

I accept the amendment.

The resolution as amended was adopted.

Mr. Purifoy:

Mr. President: I have a resolution I desire to offer and I will read it:

*Resolved*, That nothing expressed in the reports, papers, addresses, or discussions before this Association shall be deemed as approved by the Association, except such as are expressly adopted.

*Resolved*, That the first clause of this resolution be printed on each copy of the proceedings just after the title page

The President:

The chair will hold that that is now the situation in the Association; that that resolution is unnecessary, that it is now the law of the Association.

Mr. Purifoy:

Mr. President: The intendment is, that it shall be printed on the page after the title in the pamphlet proceedings, to show that there is no approval given. Of course if any considerable objection I would not insist on it. The question of receiving reports would be as to whether we approved a certain document, for the reason I wish it put in.

The President:

I will state to the gentleman, my understanding has always been, if there was a question whether a paper should be printed it was with the Association. It has been the custom of the Association with papers read, to be received and filed and printed. If there is any question as to the propriety of printing it is with the Committee on Publication, and if that committee decide it shall not

be printed it is not printed. It seems to me your resolution is out of order, and I shall so hold.

Mr. Bromberg:

Mr. President: I would like to ask a question: If the Committee on Legislation which is to endure until the next meeting of the Legislature be the present existing one?

The President:

No sir. The one to be appointed by Judge Roulhac the incoming President that is to hold until the adjournment of the next Legislature.

Mr. Alex. T. London:

I suggest that the purpose was that they should hold until the next meeting of the Bar Association, after the Legislature. We did not want the Committee to continue.

The President:

That is understood.

Mr. Busbee:

Mr. President: It may not be inappropriate for me to express my great appreciation of the cordial hospitality extended to me personally by the members of the Alabama State Bar Association, and especially to express my very great appreciation of the value and importance of their work in reference to the disbarment of members under the new Statute of Alabama. Much more than anything I have heard, has impressed me during my pleasant stay today, has been the actual work accomplished in purging the profession of unworthy members, so much so, that I shall recommend to our committee of the North Carolina Bar of Legislative Reform, the study of

that statute and its workings, with the earnest hope that we may follow it on the ideal which Alabama has set. So far as the world at large is concerned, that the spirit of brotherhood is not so strong that it will save an unworthy brother from the proper exposure and punishment of his acts. I am so much gratified to see the successful working of your statute, and the effect it has already had, and will continue to have, to purge the profession of unworthy members. For that I wish to express my own very cordial thanks.

On motion the Association adjourned *sine die*.

ADDRESS  
BY  
**EDWARD deGRAFFENRIED**

President of the Association.

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*Gentlemen of the Bar Association:*

The last twelve months have witnessed events which will leave a lasting impression upon the history of the world.

The settlement of the war with Japan and China resulted in certain concessions from China to Russia in the province of Manchuria. It was agreed, however, that Russia should withdraw her troops from that territory in the latter part of 1903.

As the gradual aggressions of Russia in the East have been jealously watched by the Powers, and especially by Japan, the most interested of all the powers except China, and as Russia refused, upon demand of Japan, to withdraw her troops at the time agreed upon, the unfortunate war now existing between Russia and Japan is the result. This situation is to be deeply regretted. It involves one of the oldest and most populous nations with a more ancient, but numerically inferior people; a people, however, who in the last fifty years have exceeded all others in the rapidity of their advancement and culture.

It is to be trusted that this appeal to arms will be speedily settled, on terms alike honorable to both nations, and

and that in the adjustment of the difficulty the peace of the world will not be disturbed by an effort to partition or encroach upon the integrity of the Chinese Empire. About the time of the opening of hostilities, the United States addressed a note to the Powers inviting them to suggest to the belligerent nations that the war be localized, to the end that peace and the undisturbed sovereignty of China in all her provinces other than Manchuria might be maintained. This was agreed to, and our government was thus an instrument in confining the war to narrow limits, and, in all probability, of preventing grave disturbances in many provinces of the Chinese Empire.

#### ALASKAN BOUNDARY.

While the friendly relations between these two nations have thus been interrupted, much has been done in matters of International importance, indicating that we are slowly but surely approaching an era when the appeal to arms will be abandoned, and the troubles between nations settled intelligently and justly by arbitration.

Since the acquisition of Alaska by the United States from Russia, there have been disputes between this Government and Great Britain as to the true boundary between the two countries. The dispute was recently submitted to a court composed of Englishmen and Americans, and the boundary permanently and peaceably established in a manner satisfactory to both governments. Allied as the people of these two countries are in laws, customs, blood and language, possessing as they do a common destiny—the destiny of the Anglo-Saxon race—it is to be trusted that in the future all their differences shall be thus determined. These two nations when united in a common purpose, carry with them the peace of the world.

## HAGUE TRIBUNAL.

The Peace Tribunal of The Hague has also been of recent benefit to the world. The demands of Germany and other powers upon Venezuela for the payment of claims, with a seizure of the customs at La Guira and the consequent disorders attendant thereon, found adjudication at the hands of this Tribunal, and its awards are receiving the same respect, and are productive of the same fruits as if pronounced by a court capable of enforcing its demands. The conclusion of treaties between the prominent European powers, whereby, for a period of five years, they have agreed to submit disputes of specific character to the determination of this Tribunal, thus creating in effect a great International Court, has done much to give it prominence and contains a promise of its great usefulness in the future.

## THE ISTHMIAN CANAL.

All questions as to the ownership, location, and speedy completion of the Inter-Oceanic Canal have been removed.

Colombia having refused to ratify the canal treaty submitted by this Government, the State of Panama at once proclaimed her independence, which the United States instantly recognized. A treaty granting to this Government all that was demanded, was, with a celerity rarely equalled in diplomacy, ratified by both Governments.

Panama, without bloodshed, became an independent State, practically under the protection of the United States, and the Isthmian Canal, its location and ultimate construction, a certainty.

If the European Powers had not a few years ago underestimated the American Navy and over-estimated that of Spain, it is probable that Cuba would have become an independent State without war, merely upon our demand.

Certainly the hopeless inferiority of Colombia in this regard and her utter inability to protect herself against the power of the United States, saved us the expense of war and indicates the wisdom of the Government in the gradual increase of its naval establishment. If our present aggressive foreign policy is to be continued, a time will come in our history when we will become embroiled in complications with adversaries nearer our equals in wealth and population than the feeble countries of Spain and Colombia, and possessing navies equal to or greater than any of which we are now entitled to boast. Of course it is not my purpose in this address to applaud or to criticize our Government in this matter. Panama is, as stated, an independent State; the canal has been definitely located, and the history of its location forms a part of our own history. In placing it across the Isthmus, grave difficulties were quickly and successfully met. When completed it will be of vast benefit to mankind and a lasting evidence of American pluck and energy.

#### OUR RELATIONS WITH CUBA

In addition to the ratification of the treaty between the United States and Panama, above referred to, the last Congress ratified also the treaty between Cuba and this Government, whereby each of these Governments receive certain reciprocal advantages from the other. As soon as the independence of Cuba was established, differences of opinion arose as to the ownership of the Isle of Pines. It was at first claimed that this Isle, became upon our settlement of the war with Spain, the property of the United States, and upon the faith of such claim a number of our citizens bought property and built homes on the island. The Isle of Pines during the Spanish occupation was always regarded as within the Jurisdiction of the Cuban



administration, and it has justly been determined that the Island belongs to Cuba.

## IMPERIALISM.

Recent judicial decisions by the highest tribunal of the Nation, together with the form of government established by us in Porto Rico and the Philippine Archipelago, indicate that Cleveland spoke wisely when he said shortly after the war with Spain that we no longer possessed the Government of our fathers. In the recent decisions holding that the Constitution does not become operative over newly acquired territory except through the will of Congress, we now present to the world a government of free sovereign states, with all rights unimpaired, except those expressly conferred upon the general government by the Federal Constitution, possessing lands and people without constitutional guarantees, subject to autocratic authority, and dependent upon such government and administration as we may see proper to give.

Seeing the tendency of the times, Mr. Cleveland refused to accept the Sandwich Islands while he was President, but during the administration of President McKinley those Islands became our property, and upon the conclusion of the war with Spain, our territories had become increased by the acquisition of Porto Rico, Guam and the Philippine Archipelago. The acquisition of these latter islands, which are inhabited by people unused to freedom, and the great bulk of whom are not fit for self-government, placed upon our Government the delicate task of protecting the property and persons of the civilized against the barbarism of the uncivilized, of providing stable government and preserving order, and threw upon our courts the duty of determining the status of these islands under

the Constitution of the United States. The result is as has been stated, and, accepting the situation as we find it, it becomes our duty to civilization to furnish our new possessions with a wise and humane government, and fit their inhabitants, ultimately, for self-government.

The dash, pluck and skill of Admiral Dewey in forcing the entrance to, and in destroying the ships of the Spaniards, in Manila Bay, not only created unbounded enthusiasm at home, but startled the world. It has been followed by grave burdens, not then fully understood, but American pluck and perseverance will yet solve our difficulties in wisdom and humanity.

These lands are now our property, and they will remain under our jurisdiction until, in the goodness of time, when they are fitted for it, we can say to them as we said to Cuba: "Take your places among the nations of the world and be free."

#### CHINESE TREATY.

The ratification by cable of the treaty between China and the United States, immediately preceding the breaking out of hostilities between Russia and Japan, whereby Dalny, Mukden and Antung were opened to the commerce of the world, indicates the purpose of those now in authority in our government to protect China in the possession of Manchuria, and clearly suggests the probability that the United States will become a factor in preserving the integrity of the Chinese Empire should her dismemberment be attempted when Russia and Japan arrive at terms of peace.

#### ELECTION CASES.

While the trend towards centralization, so far as the relations of the government towards its territories and

foreign nations are concerned, has been rapid, our courts have, in recent decisions, been careful in upholding the rights of the States. The last utterance of the Supreme Court of the United States, upon the question as to whether some of the suffrage clauses of our present constitution are repugnant to the Federal Constitution, in which they hold that they are without jurisdiction to determine the question sought to be raised because of the absence of congressional legislation on the subject, is accepted as finally settling the policy of that court in similar cases.

Mr. Carl Schurz, in a recent able article, has expressed doubt as to whether the South is capable of wisely and justly settling the problem it has before it, but as he honestly admits that all of the efforts of the North, since the surrender at Appomattox, in the Amendments to the Constitution, the Civil Rights Bill, and the Freedman's Bureau Act, proved worse than futile, and that since 1876 we have, by nullifying these laws, furnished our people orderly and well managed governments, it might be suggested that out of our recent efforts our states should, in the natural course of events, be stronger and better able, under the law, to cope with all questions peculiar to them. He admits that the speedy administration of the law in the Peonage cases, in which the Judge, Prosecuting Attorney, Jury and Defendants were all Southern white men, is significant, but he calls attention to the fact that in the South there are two kinds of white men—the one cultured, just and progressive,—the other ignorant, and at times inclined to take the law into his own hands.

It might be suggested that the race difficulties in the City of New York which caused Mr. Dooley to remark to Mr. Hennessy a few years ago that "the Negro must continue to live down South, and be a subject race, or live up

North and be an object lesson", coupled with the lynching in Delaware of a negro by white men, the race riots in Indiana, and the recent condition of anarchy in the State of Colorado, would indicate that humanity is much the same, under similar circumstances, everywhere; that in our discussions we should, at least, be charitable; that none of us are cleanhanded, and that in attempting to remove the mote from our brother's eye, we should be very sure that we have neither a mote nor a beam in our own eye. Lawlessness in one section, however, in no way mitigates or excuses lawlessness in another, and a supreme duty rests upon those who execute our law to see to it that, by its just and speedy enforcement, our State and the South shall be relieved of the stigma of its disgraceful disregard by acts of mob violence. In this age of progress our footsteps lead year by year to higher conditions of enlightenment. The law-abiding must control and justice, honesty and righteousness must prevail.

Certainly the men who framed, and the men who by their suffrages adopted our present Constitution, performed no idle ceremony. It was framed and adopted that our State might be lifted from the mire of fraud and corruption; that the intelligent and the thrifty might, unchallenged, control our affairs and guarantee to the capitalist and the home-seeker, as well as to all our citizens, a capable, upright administration of our affairs by our Executive officers; and a speedy and impartial administration of justice at the hands of our courts. While imperfections yet exist there has never been a time since the war between the states when all our citizens, white and black, were as fully protected as they are now, not only by the law, but by those who administer the law.

It is to be regretted that there now exists at the North

an element who desire to strip the South of her present representation in Congress, simply because her best men are undertaking, in the only practical way available, to limit her suffrage to the intelligent and the thrifty, thus hastening the day when, under honest and intelligent government, she can speedily and impartially administer all of her laws through her courts. Such efforts are productive only of bitterness, can in no way prove of benefit to the negro or to the nation, and will prove as ineffective as any of the old methods adopted shortly after the war. We can get along without any representation in Congress, we cannot exist if ignorance and vice are to dominate at the ballot box.

#### TRUSTS.

The decision of the Supreme Court of the United States in the case of the Northern Securities Company has settled the question as to whether it is within the power of the general government to deal with what is popularly known as trusts. The Northern Securities Company, which undertook to combine the capital stock of the Northern Pacific and Great Northern Railway Companies, was held to be illegal and void because it was evident that the purpose of the consolidation was to destroy competition between these great lines of travel, and was violative of the letter and spirit of the Act of Congress.

In addition to this decision, a large number of the railroads have been enjoined from giving rebates to large shippers, and the Supreme Court has upheld the power conferred upon the Inter-State Commerce Commission to compel common carriers to produce their books and papers.

#### CONFLICT BETWEEN DECISIONS OF THE FEDERAL AND STATE COURTS.

The growing popularity of the Federal Courts, and

some recent decisions of the Supreme Court of the United States, emphasize a condition which exists, caused by the conflict in many instances between the State and the United States Courts as to the construction and application of the principles of the common law, that it would seem calls for remedial legislation.

The cases in which the United States Courts follow the State decisions have been well formulated in an address delivered before the Yale Law School by Hon. Daniel H. Chamberlain, the following synopsis of which appears in the "American and English Encyclopedia of Law":

"First.—Statutes of the States and the construction of them by the highest court of the State, are binding and conclusive on the courts of the United States in all cases where such statutes so construed are not in conflict with the Constitution, etc., and where such decisions can be regarded as the settled and fixed law of the State.

"Second.—Whenever in the judgment of the United States Court, such statutes as construed by the State Courts, are in conflict with the Constitution of the United States, or whenever they are so conflicting as that they cannot be regarded as the settled law of the State, United States Courts are not bound by them.

"Third.—In questions affecting property rights, and, especially, real property, United States Courts regard themselves as especially bound to follow the decisions of the State Courts.

"Fourth.—These rules are always subject to the qualification that the State Statutes and decisions shall violate no right secured by the Constitution, Laws and Treaties of the United States.

"Fifth.—In cases which fall under the denomination of general commercial law, and cases involving questions of public property, or of general equity jurisprudence, United States Courts are not bound by decisions of State Courts."

Thus it seems that a Federal Court is bound by the decisions of the State Court only in the construction of a

State Statute, and only then when the decisions of the State Court are consistent, and not in conflict and in cases affecting property rights.

This situation has produced a conflict and has given rise to a condition of affairs whereby, in many instances, by the mere change of forum a right of action fixed and vested by a State Court disappears into nothingness when removed to the Federal Court.

The writer has in mind an instance where an action was brought in a State Court on a policy of fire insurance, the amount being within Federal jurisdiction. The defense was that concurrent insurance had been taken out without the written consent of the insurer being endorsed on the policy. To this the plaintiff replied that he had the verbal permission of a general agent of the defendant, who was vested with general power to grant concurrent insurance. The replication was taken bodily from the case of *Alabama State Mutual Insurance Company vs. Long Clothing & Shoe Co.*, 123 Ala. 667. The case was removed to the Federal Court before pleading, of course, and that Court, although the contract in suit was made and performed in Alabama; and although under the consistent and repeated decisions of the Supreme Court of this State, as well as of every other State, I believe, except Massachusetts and Rhode Island, and many decisions of the Federal Supreme Court and the Courts of Appeal, such replications were held to be good; nevertheless, on the authority of the *Northern Assurance Company vs. Grandview Building Association*, 22 Supreme Court Reports 133, demurrers to the replications were sustained, that case holding that the consent must be endorsed on the policy unless the agent was especially authorized to verbally waive it in the particular instance.

Thus a plaintiff who had gone into a State Court with a case, the facts of which, under the decisions of the Supreme Court of Alabama, entitled him to recover, turned up in the Federal Court, on the same facts, with nothing to stand on, because of a decision of the Supreme Court of the United States, and which decision was rendered after he had brought his suit in the State Court. Particular instances where the same conditions exists are numerous. For example:

In many States trainmen and telegraph operators are not considered fellow servants, while in a very recent decision of the Supreme Court of the United States it has been held that a train dispatcher and a brakeman are fellow servants. This rule would be followed in the Federal Courts of any State holding the contrary. The Federal Court has recently held that the condition on the back of a pass, exempting the carrier from all liability, constitutes a good defense against even the negligence of its own servants. Federal Courts situated in States holding the contrary of this doctrine would be governed by it. This seems anomalous, when it is considered that the Federal Courts do not profess to be, originally, common law courts, but merely to enforce the common law of the State in which they have jurisdiction. For instance, the Federal Courts of Louisiana do not apply the rules of the common law to controversies arising before them, because that State has no common law, but merely the civil law.

It seems to the writer that this situation calls loudly for remedy. This can be accomplished by an Act of our Legislature incorporating into our statutes the principles of the common law as announced by our Supreme Court. With the decisions of our Court made a part of the statute law, the Federal Courts, as has been suggested by "Law Notes", would be bound and concluded by them.



## THE JOHN TURNER CASE.

A subject which has been growing each year in importance to the people of our country is that of limiting within proper boundaries the tide of immigration to America from Europe. This found expression in the Acts of Congress prohibiting the importation of laborers under contract for service, of the immigration of paupers and of other undesirable persons. The Supreme Court of the United States recently determined, in the Turner case, questions of moment to the country and of interest to every lawyer.

Turner was a theoretical anarchist, and he was denied admission to this country by the immigration authorities. In commenting on this case, the Editor of Law Notes, in its current issue, says:

"The Court laid down the broad principle that the Federal Government has the inherent sovereign power essential to self preservation, to forbid the entrance of foreigners within its jurisdiction, or to admit them only in such cases and on such conditions as it may see fit to prescribe. The law authorizing the exclusion of anarchists is, however, as Chief Justice Fuller stated, also sustainable on the ground that Congress has power to regulate commerce with foreign nations. This includes the entrance of ships, the importation of goods, and the bringing of persons into the ports of the United States. In regard to the Constitutional guarantees of free speech and free religion, it was said that these provisions was not inserted for the benefit of the excluded aliens, and such persons have no standing to invoke their protection.

In passing upon this case it was held by the majority of the Court that Congress cannot only exclude undesirable immigrants by direct legislation; it can also delegate, as, for instance, to the Department of Commerce and Labor, the power of final decision on the question of admissibility. Judge Brewer dissented from the opinion of the

other judges on this point, considering that the final determination of the question of admissibility should be lodged in the Courts. This makes the decision a very sweeping one, and philosophical students of constitutional history will no doubt find in it cumulative authority in favor of the existence of inherent national sovereignty, a doctrine which underlies the Legal Tender Cases and a few later decisions. Briefly stated, the principle is that Congress may exercise any sovereign power essential to self-preservation although not delegated to Congress by the Constitution; provided the State or the people are incapable of exercising it. The doctrine apparently impinges against the Tenth Amendment, which expressly reserves to the State or people such sovereign rights as are not delegated to the United States. Justice Brewer's dissent was partly upon the force of this amendment, and he suggested that the opinion of the court gave too little effect to it."

#### ACTS OF THE LEGISLATURE OF 1903.

Upon our last Legislature was imposed duties of more than usual importance, for its members were charged with the responsibility of carrying into effect the provisions of our present Constitution.

Before passing to a consideration of the work done by this body, I think it well to suggest that, as the Legislature can now meet only in quadrennial session, extraordinary care should be taken that the bills as framed and enacted into laws should comply with all the Constitutional requirements. This is suggested by reason of the fact that one of the important measures passed at the last session, the section of the Revenue Bill relating to the inspecting and tagging of oil, has already been held to be violative of the Constitution; and two others, the Jefferson County Consolidated Court bill, which concerns the administration of justice in the largest and richest county in the State, and the Lusk Re-districting bill, which concerns the

administration of justice all over the State, are under attack, and grave doubt is entertained as to their constitutionality. This last bill so far as the section providing for the waiver of jury trial, unless demanded, is concerned, has already been held by one of the late Circuit Judges to be invalid. This bill by which the State is divided into seventeen circuits, and which makes many changes in the method of administering justice in *nisi prius* courts is of too much importance to receive criticism in an address of this character, but it is suggested that when the Legislature next convenes, special attention should be given this subject and its defects remedied.

The bill as passed and approved, was not the bill as prepared and introduced into the House by the gentleman whose name it bears, and I feel sure that its imperfections, or its failure to meet our constitutional requirements, are due to the various amendments to which it was subjected, and its hurried passage on the eve of a final adjournment.

The principal other statutory changes effected by the Legislature last adjourned, in the last half of the session, are as follows:

#### MATURITY OF RENT AND ADVANCES.

The section of the Code providing that when not otherwise stipulated, rent and advances shall become due on December 25th, has been amended to read November 15th, so far as the rent is concerned. This Act as printed is peculiar in its verbiage. It purports to amend section 2704 of the Code and reads as follows: "Maturity of rent and advances. Unless otherwise stipulated, such rent shall become due and payable on the 15th day of November of the year on which the crop is grown." As the Legislature left out the word "advances" in this Act, there is a question as to when they mature.

**EXECUTION LIEN.**

It is somewhat surprising on reading the last volume of the Acts to learn that the lien heretofore created by the issuance of an execution, has been abolished, unless the judgment or decree has been recorded in the office of the Probate Judge, except where the execution has been actually levied on personal property. Such, however, is the provision of section 4 of an act found on page 273 of the Acts of 1903.

**COMPUTATION OF TIME.**

A slight change has been made by an amendment of Section 11 of the Code of 1896 as to the computation of time, by which it is provided that the first day shall be excluded and the last included, except when the last day is on Sunday, when that also shall be excluded.

**EXAMINATION OF STATE BANKS.**

A very important piece of legislation is that requiring the examination of State Banks, and the appointment of a State Bank Examiner. This Act provides that each banking institution doing business under the State Laws shall be visited and examined at least once a year by this officer; and, further, that the Treasurer shall, at least twice a year, call for a report from each of such banks as to its condition, on some day three days prior to the date of the call, which report must be furnished within five days. This Act is found on page 484 of the Acts of 1903, and its provisions are designed to afford protection to the public from the ill-advised or dishonest management of these institutions.

**SALE OF LANDS IN WHICH MINORS ARE INTERESTED.**

To facilitate the sale for division of lands held by ten-

ants in common, of whom some are minors, or persons of unsound mind, the statute now provides that in such cases it shall not be necessary, as heretofore, to proceed in a competent court for an order of sale, but that the tenants who are *sui juris*, and the guardians of such minors or persons of unsound mind, may join in a conveyance which shall be valid when the report of such sale shall be confirmed by the Probate Court.

#### WIFE COMPETENT WITNESS IN ABANDONMENT.

The last Legislature has relaxed the strictness of the common law rule, prohibiting the wife from testifying against the husband, by providing that when the husband is charged with abandonment, she is competent as a witness against him. The trend of modern legislation seems to be in the direction of altogether removing the bar against the wife as a witness in all cases. Such a statute has recently been enacted in Massachusetts.

#### ATTORNEY'S FEES.

By an Act approved February 2, 1903, it is provided that the attorney's fees of parties seeking relief, are to be paid as a part of the costs in all cases in the Probate and Chancery Courts, or Courts of like jurisdiction, wherever there is involved the administration of a trust and in all partition suits.

#### VAGRANCY.

That provision of the Constitution which incites to the development of virtue, intelligence, industry and thrift, by withholding the suffrage from those who lack these qualities, is supported not only by the legislation with regard to the prohibition of child labor in factories or manufacturing establishments, and the increased appropriation for public schools, but as well by the adoption of a stringent

law against vagrancy, which is also a product of the last Legislature. In this bill the law, which, in the Child Labor Law, has prohibited the employment of those whom nature, humanity and common sense alike require should be acquiring qualities that will enable them to be useful and helpful citizens of the commonwealth, provides that those who have reached an age when they should be self-supporting, must work. The class at whom this legislation is aimed almost without exception, are to be found within the limits of cities and towns. In these, their natural habitats, their lack of employment remits them for amusement to the cheapest resorts, where their entertainment is of the most questionable character, and their associates and their associations necessarily degrading. The rigid enforcement of this law will compel these characters to either secure employment in the towns or emigrate to the country, where, of necessity, their influence and surroundings cannot be wholly bad, and where they will be obliged to work to obtain means of living.

#### RAILROAD COMMISSION BILL..

As an outcome of the demand of several years standing, the law relating to the Railroad Commission has been so amended as to provide for the election of the Commissioners by the popular vote, instead of their appointment by the Governor as heretofore.

#### ANTI-BOYCOTT BILL..

While this section of the United States has, most fortunately, been singularly free from those conflicts between capital and labor, which in other parts of the country have been productive of so much dissension resulting in the paralysis of business, the inconvenience of the public and the mutual loss of the employer and employee, the Legis-

lature, in its late session, prohibited the doing of certain acts which generally accompany strikes, known as boycotting, providing a penalty for these methods of conducting strikes.

The conflict between capital and labor is as old as organized effort, and the panacea seems not yet to have been found. It is to be trusted that recognition of the fact that the success and prosperity of both the laborer and the capitalist is the only foundation upon which the prosperity of either can rest, will lead to some universal and permanent method of arbitration by which restrictive and penal laws will be unnecessary, and the evils which flow from these dissensions, upon the community at large, will be minimized or obviated.

#### APPROPRIATION FOR DEPARTMENT OF ARCHIVES AND HISTORY.

It is gratifying to note that an appropriation has been made for the maintainance of the Department of Archives and History. This work has heretofore been neglected, but with aid from the State, under its present able management, it may be confidently expected that its purpose will be well fulfilled.

#### ELECTION LAW.

The passage by the Legislature of the Act to further regulate elections in Alabama, amply provides the machinery for carrying into effect the permanent suffrage clauses of our Constitution.

To quote, for a moment, from the message of our present able and honest Chief Executive: "We have come to honest elections in this State. Whatever may have been said in condemnation or justification of frauds, heretofore, there is no further occasion for anything short of absolute honesty in both the primary and election. The man

hereafter who shall sin thus, is entitled and must receive the strongest condemnation of our penal statutes and the scorn of our citizenship. We must cleanse our garments. The very letter of the law should control in the registration under the permanent plan." If this Act is not to be upheld by public sentiment and rigidly enforced by our courts, then the expenditure by the State of a large sum of money in the preparation and adoption of our Constitution, and in successfully testing its validity in the Supreme Court of the United States, was worse than useless and leaves us in a condition more pitiable than the one in which we found ourselves prior to its adoption.

#### THE PRIMARY ELECTION LAW.

The last Legislature also provided for the holding of primary elections, and punishment for violations of the rules adopted for their government. While the law as it now stands is, perhaps, sufficient to meet the purposes for which it was passed, the Act is defective, and it is trusted that the next Legislature will remedy its defects. There is certainly nothing more important to the good people of our State than that primary elections, when held, shall be free from fraud and vice, and that they shall be the method whereby the people participating therein shall be able to give expression to their preferences for the candidates of their party, and that any attempt to thwart the will of the people by fraud shall be swiftly punished.

#### THE SUPREME COURT.

Attention is called to the Act to better provide for the work of the Supreme Court, approved October 10, 1903. By this Act the Supreme Court will consist of six Associates Judges, and the Chief Justice, to sit in sections of four judges. The Chief Justice is to be a member of each



section, and its presiding justice. The concurrence of four judges in the determination of any cause shall be sufficient, except in causes in which, by reason of disqualification, the number of judges competent to sit therein is reduced to five or to four, in which case such reduced number shall constitute the Court, and the concurrence of three judges shall be sufficient.

By virtue of this Act we have, therefore, to all practical purposes two Supreme Courts of four judges each, with power to determine all questions, except that no former adjudication of the Court shall be overruled or materially modified except upon the consultation of the Court as a whole; and with the further exception that when there is a dissent in a section, upon any material question, the same shall be considered and determined in bank.

The rapid increase of the business of the Supreme Court rendered it necessary that the number of the judges should be increased and as experience has clearly demonstrated that four judges can dispatch more business in a given length of time than a larger number, the wisdom of dividing the Court into sections is apparent. As there are dissenting opinions only in about ten per cent. of the cases adjudicated by our Supreme Court, and the former adjudications of the Court are generally adhered to, the necessity for the Court to sit in bank will not frequently arise, and then only in cases of grave moment or in cases involving troublesome and doubtful questions of law. I feel that the present arrangement is eminently wise, and that the profession and the people generally are to be congratulated upon the readjustment of the Court.

#### IMPEACHMENT OF JUDICIAL OFFICERS.

The Supreme Court in the last ten days made a ruling

of great importance which calls attention to a serious defect in our laws relating to the impeachment of judicial officers. While the Constitution makes intemperance in the use of intoxicating liquors or narcotics by a judicial officer to such an extent, in view of the dignity of the office and the importance of its duties, as unfits the officers for the discharge of such duties, a ground of impeachment, the Court holds that such provision is not self-executing, and the absence of an Act of the Legislature carrying it into effect, such intemperance furnishes no ground for impeachment. This is a defect which I feel sure will be immediately remedied upon the convening of the next Legislature.

#### CORPORATIONS.

It is interesting, in view of the discussions regarding trusts, corporations and mergers, that has lately obtained, to note that the Legislature has, as it has been expressed "New Jerseyized" Alabama. The present provisions of the law, as found in the last volume of the Acts, as to the organization, powers and consolidation of corporations, are broad and far reaching in their character.

Under the law as it now appears, any three or more persons may become a body corporate by making and filing a certificate pursuant to the provisions of the Act, the issuance of a certificate or other act by the Probate Judge being unnecessary. In addition to the powers heretofore enjoyed by corporations formed under the laws of Alabama, they are now invested with the power to subscribe for, acquire, hold and dispose of the stocks, bonds or other evidences of indebtedness of any other corporation of this or any other state or foreign country, and while owner thereof to exercise all the rights and privileges of ownership, including the right to vote; provided,

that no Telegraph or Telephone Company shall consolidate with or hold a controlling interest in the stocks or bonds of any other Telegraph or Telephone Company owning a competing line, or acquire by purchase or otherwise any other competing line of Telegraph or Telephone. They are also empowered either before or after the completion of their works or plants to consolidate with any other corporations, except that corporations formed for the purpose of banking or insurance shall not consolidate with other corporations engaged in the business of banking or insurance, or trust companies doing a banking business, and that no railroad company shall consolidate with other than railroad corporations or companies. Full provision is made for the merger or consolidation of corporations, with the provision that if any stockholder of any company affected by the consolidation shall dissent from such merger, he shall be entitled to receive in cash the actual value of his stock. Provision is made for the appointment of appraisers to fix such value. Corporations are also given the power to decrease their capital stock.

These are the salient innovations in the new corporation act. which is too extended and comprehensive to receive a critical analysis in an address of this length, deserving separate treatment for its full consideration.

#### SCHOOLS.

In providing the qualifications for the suffrage, the Constitution has furnished an incentive to all citizens of the State to strive for an education for themselves and their children. It is gratifying in the extreme to note that the Legislature has supplemented and aided the individual to achieve this end by liberal appropriations for the public schools, and by the passage of a law by which counties

may, if they so desire, levy a special tax for the benefit of the public schools within their borders.

At the risk of transcending the limits of this address, I desire to say that at this particular juncture in the affairs of Alabama, and of the other Southern States, this subject of education should be fostered and developed in every possible way. It is not perhaps too broad a statement to make that education is the basis of all the civic virtues and the surest and best protection against misgovernment of a people. The South is at present confronted with its burdens, not only of negro but white illiterates. It was recently pointed out by Dr. J. H. Phillips that while the South has only twenty-four per cent. of the white population of the United States, it has sixty-four per cent of the white illiterates. of the country who are over ten years of age. That this is true is not so much to our shame as it might be when we reflect that for the past forty years we have been creating anew a prosperity, a government and a social system that lay in apparently irretrievable confusion. The Southern soldier and all who were able to carry a gun were soldiers, had facing him the problem of obtaining the means of living for himself and his family, without adequate means for so doing; he had the necessity of bringing order out of the social anarchy and law out of the governmental confusion that followed the conclusion of the civil war. In this situation, and with the productive capacity of the South at its lowest stage, it was practically impossible to keep the standard of education up to that set by more favored sections of the country. Now, however, our country once more assumes her high position; our social system is secure, and conservative, just and honest government firmly established. Under these conditions it is the demand of the hour that our people be developed by all the

training of the mind and character that can be obtained from schools.

The negroes of the State, to whom education is comparatively a novel thing, are seizing it with avidity. In the Black Belt, at least, the servants in the great majority live hard, that their children may go to school and there are few negro children who are not, during the school months, so engaged. Under our laws, while they pay but a small proportion of the tax from which the school fund comes, they receive practically equal benefits, and they are largely the donees of Eastern generosity. It is incumbent upon the white people that they be vigilant and earnest to this end, and they should receive all the aid that the State can, with absolute fairness to both races, afford to give. The Constitution contained a grandfather clause to enable many illiterates to benefit by its provisions that it might be ratified at the polls, but enlightened judgment demands that all our citizens be qualified to exercise the suffrage under the most rigid requirements of educational qualification.

Carlyle has well said that "Where the possibility of an education exists, it is a crime to be ignorant," and the white people of the State owe it to themselves to see that every white child may have that possibility, by the improvement of which he may fit himself to meet the highest demands of intelligent, honest and elevated citizenship.

Any theoretical discussion of the value of education to the negro race may be pretermitted, for whether helpful or hurtful to them, they are going to have it. I regard the highest possible education of the white people as the true and only remedy for all our political dangers or perplexities. It is from the ignorant only, the ignorant maker and the ignorant executor of the law, and of that public sentiment which is above law, that any people may stand

in danger. It is this class of our own race who have hindered and will continue to retard the South's highest development—materially and morally. With our people armed, enlightened and broadened by universal and thorough education, the race and all other problems of our complex civilization, will find wise, Christian and natural solution.

ACTS RELATING TO ALABAMA STATE BAR ASSOCIATION.

The approval by the Governor of the Act to amend Sections 598, 599, 600, 601, 606 and 610 of the Code of Alabama, confers ample authority on this Association and its Central Council to speedily bring before the Courts, and, in cases held by the Courts to justify it, to speedily and amply punish all members of our profession who shall flagrantly violate the duties placed upon them by law. The duties of our profession require uprightness and honesty of every lawyer, and a good lawyer is everywhere a valuable factor in the development of wholesome public sentiment, and in maintaining that respect for law, progress, humanity and justice which is necessary to the advancement of civilization, and the elimination from the race of those qualities of barbarism and brutality which now and then find manifestation in our land. The bad man, who has license to practice our profession, not only brings it into contempt before the world, but is a potent factor for evil wherever he lives.

The law to which I refer is intended to so order the profession in Alabama that a really bad man can not appear in our Courts as the representative of a party litigant, or be permitted to feast upon the credulity of the ignorant or the unwary. The duties which this law imposes upon our Central Council are most unpleasant, and for that reason this Council should always be composed of men of ripe discretion, courage and fidelity, to the end that no

misguided sentiment may cause any of them to fail in their duty to put into operation the machinery of the law in cases deserving punishment on the one hand; and, on the other, that they may withhold prosecution in all cases until they have thoroughly investigated all the facts, and that no prosecution shall occur unless the public good requires it. I am able to say from my own knowledge that our present Central Council has honestly and courageously met every duty that has devolved upon it, and I believe that under the operation of this law your Association has become of much practical benefit to the members of our profession and to all the people of the State.

Every effort looking to the elevation of the Bar should receive the sympathy and support of all men. From our profession are selected the Judiciary, State and Federal, and the members of the Judiciary reflect the character of the profession from which they come. No matter how active and efficient our Executive Officers may be, their efforts must fail unless they are sustained by an intelligent and courageous Judiciary and our country will ever remain free so long as we possess able and fearless Judges, whose decisions shall rightfully construe the law and uphold the principles which form the foundations of the Republic.

Out of the trials of the past we have gathered strength for the future, and our State is rapidly advancing in population and wealth. Let us see to it that as we advance in material prosperity, there shall be a corresponding advancement in our love for our country and in our respect for the laws of the land and the rights of all men. There must be lifted from the State the burden of its ignorance; the judgments of our Courts must be swift in upholding our laws, and the honor of our State be preserved in its

integrity and strength. You gentlemen of the Bar must lead in every intelligent movement; you must combat each false step, or our best efforts must fail.

NOTE—A brief resume of public Statutes, important decisions and events of the past year, are required as the basis of the President's Address.



ANNUAL ADDRESS  
BY  
**HON. FABIVS H. BUSBEE,**  
ON  
“DUTY OF SOUTHERN LAWYERS TOWARD  
NEGRO QUESTION.”

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*Mr. President and Gentlemen of the Alabama State Bar Association:*

If any North Carolinian does not feel at home in Alabama it is his own fault. Everywhere he will meet the sons and descendants of his own people, and family names familiar in his home county greet his ears.

Your honored President recalls his noted ancestor, the Swiss Baron deGraffenreid, who was the leading colonist of the ancient borough of New Bern: your Secretary's forebears were lawyers and planters in Eastern Carolina more than sixty years ago. To the representatives of the older settlers who went to the Gulf States before and during the flush times, should be added the new tide of immigration which poured in when the mineral wealth of Alabama began to be developed—when the coal, which had lain hidden in its veins since the ferns and trees grew rank in the geologic ages, began to be clad in the garments of a corporation and to become a familiar figure on

Wall Street. And now one greets a recognizable face in almost every group.

#### BENCH AND BAR OF ALABAMA.

The character and record of the Bench and Bar of Alabama are the pride of her sons and are thoroughly recognized by the profession in other States. The names of Clay and Lipscomb of Saffold of Brickell and Stone of Goldthwaite and Clopton, and others of equal ability, are engraved in imperishable lines upon your judicial annals. The lawyers who preferred to remain upon the arena of their triumphs at the Bar, men like Mr. Smith, Governor Watts and others, were worthy of the court. Those who have in recent years succeeded to judicial station have fully maintained the high standard set by their predecessors.

As a member of the committee upon the Universal Congress of Lawyers, which has been called to assemble in St. Louis on September 28th, I trust it may not be deemed inappropriate for me to say a word. It is the earnest wish of the American Bar Association that the judges and lawyers of Alabama shall be fitly represented on that occasion.

No gathering of American lawyers will be complete if it lacks the presence of the senior Senator from Alabama, the great advocate of the construction of an Isthmian canal, the lawyer of a persistent purpose that has never flagged, the publicist whose omniscience is the marvel of his compeers.

"Statesman, yet friend to truth, of soul sincere,  
In action faithful, and in honor clear."

And fully abreast of Senator Morgan is his honored colleague, a typical representative of the learning and chivalry of the Southern lawyer of the old regime :

"Age may o'er his brow be flung.  
But his heart, his heart is ever young."

We shall likewise look for the intellectual face of my friend, Dr. Hannis Taylor of Mobile, a North Carolinian by birth and education, whose learning and researches into the fields of international jurisprudence and constitutional law have given him a reputation co-extensive with the confines of civilization.

#### INFLUENCE OF LAWYERS IN SOUTH.

With the abolition of slavery the commanding power of the planter class in the South came to an end. There are large farmers still, it is true, but they are for the most part men of considerable business interests, and rarely engaged in public service. It would, in my opinion, be better for the South if we could see a greater proportion of successful business men and manufacturers, farmers and merchants, representing Southern States in the halls of Congress.

Some fifteen years ago the peculiar conditions and the secret organization existing among the agriculturists of the South kindled wide-spread prejudice against lawyers as a class and opposition to the profession became the shibboleth of a political faction. These animosities have for the most part passed away, and probably in no State or country is the influence of lawyers more deeply felt than in the South.

It is foreign to my purpose today to enter into an analysis of the cause of such influence and its effect upon Southern character, interesting though such an inquiry would be. It is enough that we should appreciate the high measure of responsibility that such an influence carries with it.

#### LAWYERS SHOULD CULTIVATE LAND.

One of the causes I believe to be the fact that so many of our lawyers have always been identified with the pre-

vailing occupation of the people, the cultivation of the soil. As lawyers began to accumulate wealth and slaves, from inclination and necessity they became to some extent, planters. The white population of the Southern States, outside of the larger cities, is almost exclusively descendants of English speaking races: "Saxon and Norman and Dane are we," with an admixture of Celt and a little Huguenot, but we all yearn to become land owners. It is true that the demands of a large practice, may stifle this longing for a season, but in the end nature will assert herself.

I have never subscribed to the views so frequently expressed that a lawyer should confine his attention solely to the practice of his profession. His influence in the community and his success in law will generally be more marked if he becomes personally interested in the prevailing occupation of his neighbors and friends.

Agriculture is the universal occupation of the South, and a lawyer, if his means and other conditions justify, will generally lose nothing by owning a farm. If he is a city lawyer with more money than leisure, his farm may be a play-thing from which net cash returns can hardly be expected. But the lawyer of thrift from the small town will find a well chosen, well managed small farm the wisest investment for his savings, the source of a welcome addition to his yearly income. Calculate for one moment what would be the difference in the wealth of the profession in this State if the amounts wagered on the vagaries of United States Steel, Virginia-Carolina Chemical, or the movements of cotton ("the biggest fool on earth," as Henry Grady called it), had been invested in land.

#### A TRIBUTE TO THE FARM.

The lawyer in every age and country seems to have

turned instinctively to agriculture: if not in early life, then surely as his footsteps turn adown the hill.

Our brother Cicero, in his admirable essay which he puts into the mouth of Cato, after recounting the habits of the earlier Senators, in his stately language thus descants upon agriculture :

"In my opinion, indeed, no kind of occupation is more pregnant with happiness, not only as the business of husbandry is of singular utility to mankind in general, but as being attended also with peculiar and very considerable pleasures. I might expatiate upon the beauties of their verdant groves and meadows, on the charming landscape that their vineyards and their olive yards present; but to say all in a word, there cannot be a more pleasing or a more profitable scene than that of a well cultivated farm."

With the English lawyer a crowning ambition has always been the ownership of land, perhaps because, to use the language of Emerson: "All historic nobility rests in the possession and use of land."

Most of the Southern lawyers of early days were enthusiastically devoted to the cultivation of the soil.

John Marshall, *clarum et venerabile nomen*, was a practical farmer, giving close personal attention to his farm near Richmond. Jefferson was an earnest advocate of scientific agriculture, as is shown in his correspondence, and the effects of which are still apparent at Monticello; James Madison retired from the Presidency to his farm at Montpelier; and John Calhoun at Fort Hill, S. C., introduced Bermuda Grass into the country, was the first to lay off hill side ditches, and imported Devon cattle.

The name of perhaps the greatest American lawyer, Daniel Webster, is linked inseparably with his farm at Marshfield; and Ashland, the beautiful estate in the Kentucky blue grass, is hardly less renowned than Henry Clay,

its owner. W. L. Yancey was a planter, and lawyer-farmers abound in the South today in Alabama as elsewhere. As a harbor of rest in which to grow old gracefully when the shadows lengthen, and clients fall away, a health resort for tired wife, a change of scene from office and crowded court house, what can take the place of field and woods? To throw aside digest and report, and to study the book of Nature as it lies open before you.

"Better that man and nature were familiar friends:  
That part of man is worst that touches this base life:  
For though the ocean in its utmost depths be pure,  
Yet the salt fringe that daily licks the shore  
Is foul with sand."

To lie in the shade of trees, and watch the pigeons flutter down from the eaves, lazily to look out upon the Jerseys of renowned lineage as they graze on the rich grasses of the pasture, to hear the shouts of the delighted children wading in the branch, to inhale the aroma of the mint as it mingles its fragrance with the other familiar odors, in a word daily to come in close contact with Mother Earth, as did Antæus of old and like him to rise refreshed for new labors, these are only part of the pleasures which a well chosen farm should supply.

"Not rural sights alone, but rural sounds  
Exhilarate the spirits, and restore  
The tone of languid nature."

To grow in close touch with the men whom you will see from year to year in the jury box, to bemoan with them over the long extended drought or the latest rise in the daily wage of cotton choppers, to enter into every phase of the life of the people with whom you live, are valuable lessons which may well enter into the experience of the Southern lawyer.

But perhaps I should add a single word of caution from Charles Dudley Warner :

"Blessed be Agriculture! if one doesn't have too much of it."

But I fear I am digressing from the theme to which for a short time I shall ask your attention.

SOUTHERN ARGUMENT TO SOUTHERN AUDIENCES.

I shall speak briefly but I trust frankly upon the duty of Southern lawyers in regard to the Negro Race. I speak as a Southern lawyer to Southern lawyers, admitting that I share fully in every sentiment and prejudice entertained in North Carolina and Alabama.

The subject is hedged about with difficulties, and its discussion must range along a pathway beset with pitfalls.

As a rule the deliverances of Southern men have been addressed to Northern audiences or readers, and have for the most part consisted of facts and arguments intended to demonstrate that race prejudice and lynchings arise from fearful crimes, and are not confined to the South, but exist in all sections of the country. It is easy to prove that wherever negroes are congregated and come in contact with whites, race conflicts arise. Our writers and speakers have described in vivid language the atrocities which have been committed from time to time by brutal negroes, not in the South alone, but in Delaware, New York, Illinois, Indiana and but yesterday in New Jersey and have shown that human nature is the same in all the States, and that the same swift vengeance has been meted out or attempted everywhere.

These arguments and statements have been necessary in order to make reply to the inflammatory articles some times published by colored men and women and their eulogists. But it is apparent that the inevitable result of such discussions and polemic articles is to leave the disputants and their friends exasperated and each side more firmly

fixed than ever in their original beliefs. Sometimes we find Southern men defending what in calmer moments would be admitted to be a fearful evil. The address of Mr. Graves at Chataqua is one instance, the recent article by a colored author, Mrs. Terrell, in the North American Review for last month, is another instance upon the opposite extreme, and is, I fear, calculated to do injury to her race.

Each is speaking in the wrong direction and to the wrong audience. It would be easy to gain your unqualified approval while I pictured the intolerable conditions which co-operated to bring about race antagonisms in the South. Even while I speak the hunt for a negro fiend is going on in New Jersey, and we feel sorely tempted to uphold any method of extermination which may be carried out.

But will this accomplish any good? It will be met perhaps, by the recital of dreadful torture inflicted upon some negro under suspicion whose guilt was not beyond question.

#### NEGROES AND EDUCATION.

It has been recently demonstrated that it is lamentably easy to enkindle feeling against any plan of education broad enough to include children of both races, if it involves, as it necessarily does, taxation upon the property of the people generally. Many men who are intelligent, humane, broad minded in all the transactions of life look with distrust upon any education of negroes which goes beyond the barest rudiments.

#### AN APPEAL TO SAVAGES.

However, the subject of education is foreign to my theme, as it deserves a separate discussion. Since articles



in the press not always temperate in tone nor reliable as to facts, cannot reach the people whom it is necessary to move, since the pulpit is too often silent when it should fearlessly speak out, or sometimes, as recently in Delaware, actually upholds mob violence, I have determined to appeal to Southern lawyers.

In the name of our dear Mistress, the law, I ask you, lawyers of Alabama, jealous of her reputation and devoted to her material advancement, to exert your personal and united effort, to arouse and cultivate a public sentiment that will secure to the members of the colored race, the protection in person and liberty which the Constitution of Alabama solemnly guarantees to every man within her borders.

When the relation of client and attorney exists, you need no urging. Day by day you can see anywhere a faithful lawyer standing fearlessly in defense of the life, liberty and property of a colored client, public clamor rolls unheeded by, personal interests are disregarded, the lawyer sees only the straight pathway of duty and in it he walks to the very end.

#### RIGHT OF SUFFRAGE NOT INVOLVED.

It is hardly necessary to say that I am not discussing the political aspects of the negro's rights. It is a fatal error to treat the question of restriction upon the suffrage as closely connected with mob violence. If those who apologize for the excesses of mobs, who are allowed to rest their defense upon the advisability of restricting suffrage by constitutional amendment, an unjust advantage will be given them in any discussion.

There are few lawyers in Alabama or North Carolina, who have not participated to a greater or less degree, in a

movement to keep the control of the State and of every department of its government, State and county, in the hands of the white race.

Before the Constitution of Alabama was amended, practically the same result was obtained by other methods—methods which it would be difficult to justify as an abstract proposition of ethics, but which no man in the face of the conditions which surrounded him could unreservedly condemn. Personally, every man here would decline to actively participate in a fraudulent election or to countenance the open use of force at the polls, and the same is true in North Carolina. Yet there has been no instance in which I have not defended, and you would not defend without charge, election officers indicted in the Federal Courts. But since the constitutional amendments have been added to our organic law practices of this kind whether excusable in the past or not, will be, I trust, forever laid aside.

The amendment restricting negro suffrage, but permitting the educated negro to vote should be enforced with absolute fairness to every citizen, white or black, and not made the instrument of restrictions upon the suffrage beyond their terms. The recent cases in the Supreme Court of the United States have demonstrated the difficulties which seem to prevent the review of these amendments by judicial tribunals. If in any unlawful manner these amendments shall be adjudged by any tribunal competent to enforce its decisions to be in conflict with the Constitution of the United States, another and a different question will be presented. But they are now as much a part of the organic law as any other section of the Constitution.

Men who have in good faith sworn to uphold the Constitution, as all lawyers have done, might well unite in building up a public sentiment which will see that the

amendments are honestly carried out in letter and spirit. Such sentiment will be more apt to be encouraged by lawyers, as lawyers, than by those who are in public office.

But it is not my purpose to discuss political rights. Every reasonable man must admit that in the future we can safely inculcate and practice in election methods the utmost fair dealing. We can safely teach our children to refrain from the election methods we have formerly countenanced or at least failed in good faith to oppose. We can, hereafter, with a clear conscience, point the "slow, unmoving finger" of scorn at the padded registration and flagrant frauds of Philadelphia.

But from the lawyers who are not in office, lawyers who in the practice of their profession are daily demanding and securing even-handed justice for colored men before courts and juries, we may confidently expect to see an influence exerted to foster and develop a spirit of fairness to men of an inferior race.

#### NEEDS NEGRO LABOR.

It is with good reason that I speak to Alabamians. In no State in the South can negroes hope to receive more consideration than in this State. Within her borders is the most successful institution for the teaching of industrial education among the negroes that the world has ever seen, and the labor of its president has met with an appreciation that is universal. In Alabama, as much as any State in any State in the Union, there is continued daily need for colored laborers and artisans. What the ultimate future may bring forth, no man can safely predict, but it is certain that during the lifetime of the present generation, the chief source of unskilled labor in the fields, the mines, the forests of Alabama, will be the negro race. The geographical centre of the negro race in the United

States is in DeKalb County, Ala. Colonization, or deportation rather, is an empty dream, and immigration of white laborers in any sufficient quantity, is impossible to secure while negro labor, at its present wage, occupies the ground. The large introduction of immigrants of the type now thronging the shores of America, Slav, Russians or Southern Italians, from the cities, might be of very doubtful benefit, if it could be obtained. Immigrants from Northern Italy are desirable. But while negroes will never be deported from the country at large, and while the race problem will be with us so long as the century lasts, negroes can be driven in numbers from one State to another, and even more readily can they be driven from particular parts of the State into other parts.

Owing to the greater advantages afforded by the fertility of the soil of the black belt, I am informed that the negroes are crowding into that section and that it is already a serious question how the owners of the lighter lands of some counties can retain their laborers.

The State needs the negro laborer, and the negro laborer needs the opportunity to labor in her fields and forests. Can we expect the negro to remain unless we are ready and able to protect him in life, liberty and property, and if he shall happen to fall under unjust suspicion, to guaranty him a fair trial in the Courts? If the matter is treated purely as an economical question, it ought to appeal to us most strongly. This will probably become an acute problem when the demand for laborers for the Panama Canal has had its full force.

I am fully aware that the negro is receiving as complete protection in Alabama as in any other State in the South. The past record and recent judicial history of the State make it clear that Alabama stands among the foremost

States of the South in this regard. It was a sad but honorable day some years ago when the supremacy of the law was maintained at fearful cost in your most progressive city. Its soil was reddened with the blood of its best citizens, martyred in defending from the fury of a mob, a wretched and detestible white murderer.

More recently there have been convictions in your courts of those who prostituted the forms of law to entangle helpless negroes in a peonage but little removed from slavery.

In Elmore County within the past two or three years, men have been convicted for the murder of a negro under circumstances equivalent to lynching.

It is sure that if any State of the Gulf States will take the lead in inaugurating effective measures to restore the unquestioned supremacy of law, we may expect it to be Alabama.

#### STATISTICS OF LYNCHING FOR 1903.

It is difficult to obtain statistics that can be relied upon, but it is more than probable that although there are some cases reported in a distorted form and perhaps some few fabricated, there are others in remote localities that are not reported at all. I have found that the report of The Chicago Tribune is the most conservative and circumstantial.

For several years there has been a gratifying decrease in the number of cases of mob violence reported.

The largest number of cases was in 1892, when there were two hundred and thirty-five persons lynched, according to The Tribune. Another estimate for the same year, found in the Encyclopedia of Political Science, is 241. Of the 235 cases, there were 208 in the South, and Alabama was charged with 22. In 1893 there were 200 cases.

The number diminished year by year, but never less

than 100, until in 1902 it fell to 96. Last year it had increased to 104, of which only two cases were in Alabama.

Of the lynchings reported last year 12 occurred in the North and 92 in the South. The victims were 86 negroes, 17 whites and a Chinaman. The alleged crimes were homicide, 47; criminal assault, 11; attempted assault, 10; murderous assault, 7; unknown offenses, 5; complicity in murder, 5; arson, 4; race prejudice, 5; suspicion of murder, 3; mistaken identity, 3; insults and threats, 8; refusing to give information, 1.

This is the ghastly record!

During the present year thus far there has been apparently a slight increase. Even as I write the wires send the following telegram from Mobile, dated June 22nd:

"A mob at Lamison forced Ephraim Pope, a mulatto, to confess that he had tried to attack a young white woman, and shot him to death."

What the facts were I know not. All that we are told is that the confession was forced and the offense charged was that he tried to attack. Another case has just been reported from Mississippi and another from South Carolina.

#### CAUSES OF THE GROWTH OF LYNCHING.

It will be an interesting inquiry for the future historian to ascertain and analyze the causes which have been operative in bringing about the frequent resort to mob-law in the South. It is doubtless the resultant of a combination of forces, some of which had their origin soon after the end of the civil war.

The election of men to fill Judicial offices, in many instances of unworthy character, bitter prejudices and without legal learning or ability, in the days of 1868, had the tendency to weaken the traditional reverence of the Southern people for the administration and the officers of the

law. The organization of the Ku-Klux, partly in self-defence against the organized negro law-breakers, and partly as a political organization, and the resort by these bands to unauthorized means to strike terror into turbulent negroes, and sometimes to punish white political agitators, were factors of importance. But it was not until members of the negro race were guilty of a series of outrages upon our defenceless women in various parts of the South that the resort to immediate execution without trial became common in the Southern States.

#### NO LYNCHING IN THE OLD SOUTH.

The slightest examination into the ante-bellum history of the South will disclose the fact that in the days of the old South, the days of slavery, there was no part of the world in which the obedience to the commands of the law, and reverence for its officers, held more complete sway. A most striking instance is shown in the Nat Turner insurrection in 1831. Turner was a slave that fomented and headed a dangerous servile insurrection in Southampton County, Virginia, in August, 1831. Gathering a following of about seventy slaves, he ranged for a day or two with his blood-thirsty gang through the defenceless homesteads of Southampton and the adjoining territory. Every man, woman or child who was captured by this merciless crew was immediately murdered.

As soon as the citizens recovered from the shock the women and children were taken to a place of safety, the men assembled with such weapons as could be hastily procured, and the band was quickly dispersed, killed and captured. Nat Turner the leader escaped and remained in hiding for several weeks. When he was captured, will it be credited that he was protected from violence, every form of law was observed, and counsel was assigned for

his defence. Some weeks afterward at the regular term of Southampton Court in November, 1881, he was brought to trial, counsel was assigned and the negro was given every protection guaranteed by the constitution. He was convicted and hanged.

This was a slave who had been the direct cause of the murder of sixty people, chiefly women and children.

I recall an instance in my own practice, about 1873 or 1874 when a negro committed three capital offences in an hour, burglary, arson and outrage, as well as highway robbery, his victim being an old lady of high character. He was arrested with the evidence of his guilt upon him, and brought to Raleigh over twenty miles distant through the country, accompanied by the son of his victim. I prosecuted him before a jury composed of twelve negroes, and he was convicted and hanged. I know of no community in the South or West where such an occurrence would be possible today.

We are naturally sensitive in regard to the charge against the South arising out of instances of mob violence, and we have sometimes rested the defence upon a foundation rather difficult to establish.

#### FACTS WE ARE OBLIGED TO ADMIT.

We cannot truthfully deny certain thoroughly established facts: The victims of lynching have not all been colored, but the great majority have been. This is true in Northern as well as in Southern States, and race antagonism called forth generally by crimes of negroes is a powerful factor in arousing the passion of the populace both in North and South. It is only in the extreme Western and Northwestern States that a majority of the victims are white or Chinese.

While instances of lynching are by no means confined



to the South by far the larger number of cases have occurred there. This is due partly to the fact that the negroes are chiefly found in the South, and possibly partly to the temperament which more vigorously resents a wrong.

It is true that lynching is more certain to follow a charge that the accused is guilty of criminal assault or attempted assault, yet each year there have always been many more cases for other offenses than for the crime upon which the argument in its excuse is generally based.

I have just given the figures for last year, twenty-one for assault and attempted assault out of 104, one-fifth of the whole number.

We are also compelled to admit that lynchings have sometimes been accompanied by acts of torture, negroes have been burned at the stake, their agony has been prolonged and there have been savage mutilations, both before and after death. These tortures have sometimes been inflicted upon women and in the presence of a mixed crowd, including young persons.

On Tuesday, June 28th, the Associated Press dispatches report that a negro was arrested, charged with assault at Eupora, Miss., that his victim, a girl of 16 adjusted the noose about his neck and led the horse from beneath the wretch, thus acting as his executioner. The horror of this is beyond words!

#### LAWS ADEQUATE AND PUNISHMENT SURE.

We cannot honestly claim that our laws are inadequate to deal with crime nor that the Courts are partial towards negroes accused of crime. No reliable instance can be given for many years in which a negro accused of the murder of a white man, or assault upon a white woman and proven by legitimate and sufficient evidence to be guilty, has been acquitted.

Nor are there very serious delays in the administration of justice except the usual appeal to the Supreme Court, nor frequent pardons or other excuses sometimes given as a justification for lynching.

#### ONLY EXCUSE FOR LYNCHING.

In the history of States occasions sometimes arise when the safety of the community seems to demand heroic measures. "*Salus populi, suprema lex.*" One cannot wholly condemn the work of the Vigilance Committee in San Francisco, soon after the discovery of gold in California. The city was practically under the control of the criminal classes and murderers and gamblers rode rough-shod over the inefficient courts, and debauched the administration of justice. When the evil became unbearable and the very foundations of society seemed to be threatened, determined men formed a Vigilance Committee, arrested the evil doers, gave them as fair a trial as was possible under the excitement, and a short shrift with the rope. The remedy was a severe one, but the rule of the criminal and gambler was at an end. The committee did not long continue to act from high motives, its members fell under suspicion and its reign ceased.

In more recent days, when the failure of justice in New Orleans demonstrated that the juries were either terrorized or bribed, and the dread power of the Mafia was exhibited even in the halls of justice, when a verdict was rendered which apparently showed that the law as administered was powerless to protect society, citizens, usually law-abiding, courageous men who were not afraid of the power of an imported criminal secret society, and who were determined to crush a conspiracy which set at defiance all law, deliberately put to death men who ought justly to have been convicted of murder, but who had been acquitted.

As perilous as this expedient was, its effects were salutary and New Orleans escaped peril. Any justification or excuse of this is not strictly logical, I admit, but we must take into consideration the character and motives of the participants.

We cannot be inadvertent to the serious danger incurred by such violation of the law and usurpation of the powers of a court, but sometimes an occasion may arise in which the path of safety seems to be only in that direction.

#### COURTS DO NOT FAIL TO PUNISH

No excuse of this kind can be truthfully given for the exercise of mob law in any section of the South. There is today no county in any Southern State in which there is the slightest danger that a colored criminal will be acquitted by a jury for any offence for which a lynching is possible, if the evidence shall warrant a conviction. Far greater is the danger, here as elsewhere, that an influential or wealthy citizen charged with homicide, shall be improperly acquitted. Criminals of this kind need never fear the fury of the mob.

To repeat, after any unprejudiced investigation I think it will be found that these facts remain beyond cavil or contradiction. Lynching is still prevalent in the South, less so than it has been, but still much more so than in Northern and Western States; it is decidedly less in Alabama than in the neighboring States. In the South the victims are usually, but not always, colored, and race prejudice or racial antagonism enters strongly as a factor in all States. The crime charged is frequently criminal assault upon women, but much more frequently homicide. In quite a number of instances the offense charged is a minor crime, assault, robbery, sometimes threats or insolence. Each year there are cases of mistaken identity.

Sometimes the executions are attended with torture, and take place in the presence of large crowds of both sexes and all ages.

#### THE DUTY OF LAWYERS.

If this is a temperate and truthful statement, as I believe it to be, if these unlawful executions or homicides have not been brought about by any failure of justice in the courts, is it not time that the lawyers of the South should be aroused to consider the inevitable tendencies and results of homicide by mobs? Their mere disapprobation, condemnation in the abstract, accompanied by no open expression when the emergency arises, will not avail.

There are no open defenders of lynching as a proper and ordinary punishment for crime, but there are those who contend that where a certain offense has been committed, or even attempted, and the person accused is a negro, in order to relieve the shrinking modesty of the victim from the ordeal of a trial in the courts, the best way is to turn over the offender to the vengeance of the mob.

Will this contention bear the test of examination? No man with the instincts of humanity would for an instant tolerate an execution by a mob if there remained a reasonable doubt of the guilt of the person charged. It is a crime beyond words to describe to deliver over a helpless victim of suspicion into the hands of his unlawful executioners, inflamed by passion yet regarding themselves as vindicating the honor of outraged womanhood, if the poor wretch should be innocent, or not known to be guilty.

In every argument advanced to excuse the usurpation of the province of the law, the question of the method of determining the guilt of the accused is ignored or importance minimized. But it is the greatest of the underlying

horrors of mob law, that there is and can be, no practicable method by which this question of guilt or innocence can be determined. It is true that there are many cases in which guilt is reasonably clear, but these very cases tend to create a public sentiment which excuses the mob in the next case, which may be of doubt.

The elements of doubt in every inquiry as to the commission of a crime are two-fold—has an offense been committed, and is the person in custody the perpetrator.

#### THE RIGHT OF TRIAL.

It is the baldest truism to say that under every State Constitution, by the common law, and under the sacred guarantee of *Magna Charta*, the priceless heritage of English speaking people for centuries of freedom, every man charged with crime, influential or humble, white or black, is given the right to be confronted by the witnesses against him, and to cross-examine them, and to have an opportunity to produce witnesses in his defense.

Is not this a mockery when the slightest effort upon the part of the supposed criminal to ask the alleged victim a question, would be a signal for his death?

The identity of the person charged with crime should be as certain as human testimony can make it. Is this secured by a hurried presentation of a dazed or terrified negro to the injured woman, suffering as she is from nervous excitement, while the crowd without is grimly awaiting its victim? Not unfrequently there is hardly a pretense of an investigation, the victim being taken from officers or jail directly to his doom. Nor indeed would it be possible under such circumstances to enter upon an investigation which would be worthy of the name.

It would require a courage rare in the extreme for a negro to offer himself as a witness in behalf of the sup-

posed criminal, and such witness would be his only hope for establishing his defense. I do not mean that a careful investigation is never made, but the rule is to the contrary. An inflamed mob, led by its most extreme members, is the trier of the accused.

Is it to be wondered at that there is often a fearful heading in every list of lynchings, "mistaken identity, and another "suspected of crime." We are compelled to choose between two alternatives. Upon the one hand we have the painful necessity of obeying the law and of bringing the woman who has suffered frightful wrong upon the witness stand in a court house, which should be cleared of idle spectators, as now permitted in Alabama by constitutional amendment, and where she will be the object of solicitude and pity and defended from unjust aspersion.

Upon the other we are obliged to violate the fundamental basis of the Constitution and to incur the terrible risk of putting to death, sometimes with torture, a human being charged with crime, without trial, without opportunity for defence or safeguard against error.

Can a humane, intelligent lawyer hesitate as to his diction?

I will not suggest what our feelings would be if the colors of the actors were reversed.

Can we blame the intelligent and educated negroes if their feelings are greatly wrought up upon this harrowing subject? We should keep in mind the fact that the very enormity of the crime charged so excites the fury of the mob that it sometimes seems to supply the lack of conclusive proof.

#### NO APOLOGIST FOR LYNCHING FOR OTHER CRIMES.

As to lynching for all other crimes which, according to

the best statistics obtainable, constituted four-fifths of the cases last year, no apologist has yet arisen.

We cannot meet these statements by simple denials. The instances have been given publicity by newspaperapers and not questioned at the time they occur, but only when assembled in statistics afterwards.

No man within the sound of my voice can fail to know that homicides of this character have occurred in numbers each year, and now recurring from week to week.

To depict or dwell upon the evils and dangers arising from a contemptuous disregard of law, and from resorting to murder by a mob as the ordinary method to follow in cases of alleged crime committed by a negro, or by a white man if heinous in its character, would be to offend your intelligence. I am not attempting to say anything new, or to utter one original truth. The ordinary fundamental truths of civil liberty, the basic guaranties of constitutional law, are neither novel or modern. It has been said that we do not need new truths so much as we do the recoin in the mint of thought the truths that have become worn and undecipherable through handling of ages, and to send them forth again as fresh and current coin, stamped with the image and superscription of truth.

Judge Somerville, of Alabama, has recently written:

“Mob violence in every form, which treads under its ruthless and bloody feet the law of the land, for the maintenance of which all just governments are constituted, is a species of anarchy which assassinates its victims and ‘stabs the law.’ It is equally condemned by the stern voice of the Decalogue and the gentler teachings of the Sermon on the Mount.”

The work of Judge Thomas of this city, in the formation of proper public opinion upon this subject, has been marked and important.

The wrong done to the victim is not the only nor perhaps the greatest evil. In the parliament of the world's opinion, as well as by our own laws, the killing of a person charged with crime by an assembled mob, without the form or substance of a trial, is simply murder, nothing less.

#### INJURY TO MORAL SENSE OF COMMUNITY.

It inflicts a lasting injury upon the moral sense of the community in which it occurs. The members assume that they are the avengers of outraged womanhood, or of the sanctity of life, or property. Many of them believe, and not without cause, that while they are not acting strictly according to law, they have the tacit approval of the community behind them. Boys and sometimes women are present when the shrieking and dazed wretch is put to the torture or death. In a recent instant in an adjoining State, to which I have already alluded, a girl of 16 was induced or permitted to adjust the noose, and to lead the horse from beneath the victim, leaving him hanging. She was led to imbrue her hands in blood—in order to save her from the ordeal of appearing as a witness!

The minds or consciences of the spectators or participants receive a moral wrench the effects of which may endure for a generation.

But why continue? All these facts are so self-evident, so trite and so thoroughly admitted, that it seems puerile to recount them. But the lynchings go on, and no concerted effort is made to stop them. Everyone condemns, the newspapers denounce, but no grand jury indicts and no man is held to answer.

It is true that there is no legal duties resting upon lawyers which does not rest upon every law-abiding citizen, but I believe that owing to the position of lawyers in the



community, they have an added moral responsibility. Every lawyer has taken an oath to support the constitution of the United States, and of his State, and this obligation was never intended to be a meaningless formula, nor to have been thoroughly discharged by passive acquiescence.

The fundamental principles of civil liberty, nourished upon English soil, crystalized in Magna Charta, incorporated by our fathers in State and Federal constitutions, can never be lightly disregarded. You have sworn to uphold the provision that no man shall be accused, arrested or detained except in cases ascertained by law and according to the forms which the same has prescribed; that no man shall be deprived of his life, liberty, or property, but by due process of law.

Though it is a problem whose solution may baffle the most untiring, yet I believe that the obligation to combat this grave disease rests with an especial force upon lawyers.

Public opinion is at the root of all observance of law, and statutes, if unsupported by it, are without force and powerless. And public sentiment, as Spencer points out, is nothing but the sum of the minds and consciences of the people. We can make unceasing efforts to educate the public conscience. When an occasion arises lawyers are not generally found wanting.

Senator Simmons of North Carolina recently pleaded successfully with an angry mob to spare the life of his father's murderer, and to leave him to the law.

Lawyers can uphold the efforts of State officers to bring to trial those who have defied the law.

#### SUGGESTS A REMEDY.

Convictions may be difficult to obtain for the present,

but grand juries may be induced to find indictments. One serious effort to convict a person charged with lynching, even if it should fail, as it almost surely would, would have a greater deterrent effect than a hundred addresses and sermons.

So far as legislation is concerned, we have perhaps enough laws upon our statute books, if they could be fully carried out. It might have a good effect to give the widow or child or dependent parent of the person killed, a right of action in any county in the State, for penalty of a prescribed amount against the officer from whose custody the prisoner was taken, and his bondsman, and also against the county in which the lynching occurred. If the officer had been recreant in his duty, the recovery should go against his bond, if he had not been, then against the county. In this way the liability could be placed where it belongs, and the tax payer could be made to feel the pecuniary burden of the wrong.

I have in the performance of what has appeared to me to be a duty, dwelt upon a painful theme. I have spoken frankly, without the expectation that I could shed any new light upon the subject, but hoping merely to restate the ancient fundamental doctrines of justice and truth.

I believe that there can be no abiding health and strength in any people, no hope for permanent progress, that is not based upon the supremacy of law.

May we, in the fullness of time, see the dawn of a day, when

"Sovereign Law, that states collected will,  
O'er throne and globes elate sits Empress,  
Crowning good, repressing ill."

## CIVIL PROCEDURE

BY

**C. P. MCINTYRE,**

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*Mr. President and Gentlemen of the Alabama State Bar Association:*

The English people have one characteristic that will always keep them in the first rank of civilized nations. The English have never produced a Michael Angelo, nor a Raphael, nor a Wagner. If we except literature, their contribution to the art of the world has been insignificant. They are not a musical, they are not a religious, and they are not an art loving people. They are, however practical. This useful trait has compensated them for their defects in other respects, and has enabled them to achieve great and lasting renown. Greece won her place in the temple of fame through philosophy and art: Rome's claim to the admiration of mankind came through empire and civil government. England following the practical turn of her people has chosen commerce as the path to national greatness and glory. The talents of her people have had full sway in this field and in this field her success has been truly marvelous. London for more than a century has been the banking metropolis of the world, and promises to continue as such for generations to come. Her ports are the busiest in the world, and her ships do the carrying trade of rival and inimical nations. Her language more nearly approaches a universal tongue, than any language ever be-

fore spoken by man. Prodigious schemes for the development of the resources of distant countries and strange people are conceived by her citizens and carried out from offices located in her great cities. Material progress and commercial activity have reached their highest point in this country and among this people.

Naturally we would look to this country for an ideal system of laws. The experience of the English people in all the relations which a world-wide commerce can create has extended over centuries. Every species of trading, trafficking and bargaining, they have dealt in. Every kind of property, that can become the subject of private ownership, is known to them. It would seem that for an adjustment of rights springing from so diverse and complicated a material development, such a people would have evolved a body of laws, full, comprehensive, simple and easy of enforcement. But a nation's experience is not always embodied in its laws, and this is especially true of England; the genius for the practical, a ready talent for taking the shortest and surest way to an end is no where apparent in the laws of this nation.

English law, including under that term, the common law and the law of Chancery, falls far short of furnishing a scientific and satisfactory system of jurisprudence. Of course, nothing is here said derogatory to the many noble and wise principles of Constitutional law, that have become identified with the glory of England, and which afford an asylum to the individual against the oppression of the State. We are speaking neither of constitutional law nor criminal law, but of law as a means of redressing wrongs between individuals. In this sense the English law cannot be regarded as a monument to the fame of those who founded it. Yet we must speak with qualifica-

cation. Only ignorance and prejudice can condemn the English law in its entirety. In many respects, it must be conceded that the English law is above criticism, and when it concerns the substantive rights of individuals, it easily takes its place in the very first rank of legal systems. There is no right of property, using property in its broadest sense, that has not been considered and accurately defined by the English law. The exact limitation of each right is set down with almost mathematical precision, and the rules of logic and the claims of justice are carefully attended to. If the English lawyers had worked out a method of unforcing rights at all comparable with the success with which they worked out a body of substantive rights, they would have produced a system of law ideal in its inflexibility, and in its practical results.

It was here where the English law failed. The remedy it furnished was by no means adapted to the enforcement of rights. Its law of procedure was a reproach to justice, and permitted so many strange iniquities as to bring the whole system into disrepute. Its shortcomings passed into a proverb, and English literature contains perhaps more flings at the law and more contemptuous allusions to lawyers than any other literature in the world. The people saw the workings of the law and came to their own conclusions. The great drawback to the English law is its procedure, and after all this is the test of a system of laws. It is here where the law comes down from the text books, the reported cases, and the opinion of jurists; and enters into the every day life of the people. It is here where a system of laws touches the acts and conduct of ordinary men, which it professes to regulate. It is here where it shows its fitness or its unfitness to serve its purpose. A man is not so much concerned with those rights which he has

in the abstract, as with those rights which he has that are enforced. A right without a remedy is worthless. We are apt to judge things, after the biblical fashion by their fruits, and so it is a system of laws must be judged by the usefulness and adequacy of its procedure, and measured by this standard the English system did not come up to the requirements or the needs of organized society.

The English law became a victim to a pernicious procedure. Under this procedure the claims of justice were subordinated to method. Form became a matter of prime importance. Pleading, that is the presenting of a cause, dominated the merits of a cause. English reports and our own reports are full of learned dissertations upon this or that point of pleading, and numerous cases involving fortunes have been finally decided and disposed of on some trivial point of pleading. Procedure degenerated into a farce. Courts became arenas where lawyers waged battle in dialectics. The end of law, that is the doing of justice between man and man, was completely ignored. Lawyers played with words, appealed to logic, metaphysics and philology to win their cases, and substituted for the wager of battle of the days of chivalry, a method of settling controversies more peaceable but not less repugnant to common sense and justice. The real merits of a suit played an insignificant part in its final determination. Lawyers became mere pleaders, or to use the words of Burke "quibbling pettifoggers". Under this system, justice was thwarted and juggled with so uniformly that in the popular mind, law came to be synonymous with dignified folly. The purpose of law is not to afford lawyers an opportunity to display their skill in the technicalities of pleading, but to offer a ready and sure means of making a man secure in his rights. A procedure that

allows all sorts of twists and turns of pleading to get in the way of the facts of a cause, and allow such things finally to decide a law-suit, is completely out of harmony with the object of law, and in the nature of things is bound to pass away.

The English law was of course adopted by nearly all of the American States. Alabama has to-day the law of England, both substantive and remedial almost in its entirety. Statutes have been passed which caused a modification here and there, but on the whole the law of Alabama is now perhaps more like the law of England of the eighteenth century than that of any other State in the Union. We have inherited necessarily the weaknesses along with the strong points of this system. Our pleading is the common-law pleading, and although altered by many statutory enactments, it still possesses abundant evidence of its origin and history. Our statutes have simplified it somewhat, yet our pleading remains in a crude shape, and is by no means a credit to our State. At the present time a cause in our courts has some chance of being tried on its merits. We ought, however, never to be satisfied until our procedure is such that a cause has little or no chance of being tried otherwise than on its merits.

Many of our sister States have had recourse to various means of escaping from the inconveniences of this cumbersome and antiquated system of procedure. The most common method of remedying the evil has been to adopt a code of civil procedure. In these States the English system has been entirely abolished; common-law pleading and equity pleading have both been superceded. As far as the manner of presenting a case is concerned the difference between law and equity has been totally wiped out. Pleading is the same whether the case would formerly

have been one of common-law or of Chancery jurisdiction. A petition containing a statement of facts and asking for the appropriate relief is filed. The defendant must either answer or demur to the petition. The answer must contain all the defenses that the defendant may desire to interpose to the plaintiff's claim. It may traverse the averments of the petition, confess and avoid them, and set up a counter claim. Special pleas, replications, and the like are all abolished. A defense, by way of counter-claim or set-off is of course treated like an original cause brought by the defendant against the plaintiff. The grounds of demurrer are expressly limited to about eight or nine, and are usually a misjoinder of causes, a misjoinder or non-joinder of parties, a want of legal capacity on the part of the plaintiff to sue, a want of jurisdiction of the court, and a failure of the petition to state a cause of action.

New York was the first State to adopt a Code of Civil Procedure which was done in 1848. New York's example has been followed by many of the States, and among them the chief commercial States of the Union.

This system has not given entire satisfaction. We hear frequent complaints against it from the lawyers who practice under it, and who therefore are qualified to form a correct opinion of its merits and demerits. Radical reforms are not always safe or expedient, and frequently do as much harm as good. The aim of those who formulated the Code of Civil Procedure was to abolish the common law and Chancery pleading, and in their stead to adopt an entirely new system. Evidently the procedure of the Civil law was closely followed in making up a new system. In the civil law there is of course no such thing as law and equity; there is no dual system such as the English law has. The procedure of the civil law, such as the code of civil



procedure of Louisiana for instance, has reached a state of simplicity and perfection which a common law State cannot hope to attain. Those who got up the Code of Civil Procedure of New York decided to obliterate the distinction between law and equity, unmindful of the fact that the difference between law and equity is one of history, of tradition and of substantive law, and cannot be abolished without abolishing the English system of jurisprudence itself. This has no doubt been the source of much confusion in the Code States, and carries with it no counterbalancing advantages. The fact that the system was new and had to go through the ordeal of judicial interpretation was another drawback. The Code of Civil Procedure has not been the great success its founders anticipated it would be; vexatious points of pleading it has not altogether removed, and it has added difficulties unknown to the old system.

The Code of Civil Procedure, however, can suggest to us many improvements in our pleading and practice. It cannot be said that we ought to adopt it in its entirety. It would be perhaps better for us to direct the development of our procedure along conservative lines, than to break entirely with the past and adopt a system of procedure altogether new and foreign to the genius of our laws. It is probable that a Code of Civil Procedure would retard rather than assist us in reaching simplicity in our pleading. Unless we go the whole length and adopt the civil law in its entirety, there is little if anything to be gained by adopting a code of civil procedure.

The distinction between law and equity cannot well be abolished, and there is no reason why it should be. The refinements and technicalities of common law and equity pleading do not owe their origin to this distinction. The pruning knife of reform may be laid to the roots of these

abuses without interfering with law or equity as now administered.

Our common law pleading, in spite of many statutes passed upon the subject is still in a backward state, and is badly in need of a general and wholesome shaking up. How much valuable time of courts, juries, lawyers, litigants and witnesses is wasted on senseless pleading matches! Hours, days, sometimes weeks, are consumed in getting causes at issue. Demurrers, motions, pleas, replications, rejoinders, and all the old antiquated arms of ancient English pleading are brought out to idle away time and confound Courts and confuse issues. All this is to no purpose and should be done away with. The Codes of Civil Procedure of our sister States here offer us a solution of this difficulty. If a complaint states a cause of action, it should be proof against demurrer. In other words, if the complaint will support a judgment by default, it should not be subject to a demurrer. The particularity and detail with which certain causes of action should be described is a requirement that serves no purpose. There should be allowed on the part of the defendant but one answer, which should contain any and every defense that he might care to set up. The defendant should likewise not be required to go into every little detail and circumstance in stating defenses, as at the present time, for instance, when a defendant attempts to set up contributory negligence. Simplicity is what we should aim at, and to approach this our present law of pleading should be subjected to a process of lopping off. We have not to go far to find plenty of examples that could be followed with profit. The forms that our Code contains as to indictments are brief, and yet sufficient. They are a model of simplicity. Likewise the few forms for civil causes and defenses that our Code con-

tains are a pronounced departure from the rules of pleading of the common law. They are succinct statements of causes of action, and point out the course that we should pursue in toning down the common law pleading. The simplicity of the forms in our Code should be extended to all our pleadings in law Courts. Time would be saved, the number of appeals would be diminished, and the law would be freed from much that is now objectionable to lawyers, Courts and litigants. Justice would receive a great deal more consideration, and cases would be tried upon their merits and not, as at the present time, often, upon some point of pleading.

While our common law pleading is far from perfect, we have made considerable progress in getting rid of many of the abuses of the old system and introducing here and there the saving element of common sense. When we turn to Chancery we find there practically the same procedure that has obtained in that Court since its origin, some centuries ago. The lovers of the antique will find in our equity pleading much to remind them of ages past and almost forgotten. Our changes in equity pleading have been fewer and much more moderate than our changes in the common law pleading. This is due to the fact that equity pleading was always much more reasonable and just in its rules than the procedure at law. There was much less technicality in presenting causes, and Chancery always kept before it the great fact that it was organized for the purpose of doing justice. No legal fencing matches were allowed in its procedure. With all this, equity pleading was by no means perfect. It had many minor faults, but its blighting defect was that it permitted causes to be carried on almost forever. a cause once begun in Chancery was apt to last for a generation. This resulted

in much deserved ridicule of Chancery Court, and frequently disaster to the property rights of individuals.

Equity pleading at the present time continues to suffer from this deadly fault. This cripples the Chancery Court, and deprives it of being the undoubted instrument of good which it otherwise would be. Its admirable machinery is greatly hampered by this circumstance, and the Court with its fine principles, maxims and extensive jurisdiction has its usefulness impaired, if not entirely taken away, by this feature of its procedure. Yet this is an evil that could be easily corrected. In fact our equity pleading much more readily than our common law pleading could be reduced to a system of a few simple rules and be made a model procedure, affording no occasion for delay and enabling the judges to dispose of cases more expeditiously than at law.

It is a singular fact that instead of attempting to remove the causes that tend to delay and put off the final decision of Chancery cases, our statutes on the contrary seemed to be designed expressly with a view of allowing such cases to be dragged on forever. For instance, Sections 427, 428 and 429 of the Code, especially 427 are a hinderance to an expeditious disposition of Chancery cases. They permit litigation to go on for years, if either party to the record, so desires it. Why should an appeal be allowed from an interlocutory order overruling or sustaining a motion or demurrer to a bill of complaint in equity? Such is not the case at law. There is no reason why it should be so in equity. There is no particular gain to be derived from this course. There are cases it is true, where it is of advantage to all concerned to take an appeal from such decrees. But taking every thing into consideration, the advantages and disadvan-

tages of these statutes, it can hardly be denied that they result in the prolongation of equity cases, and that the evil they do is much greater than the good they accomplish. Their repeal would redound to the good of Chancery Procedure, and would remove a cause of delay to the final settlement of equity cases.

The same criticism made of the foregoing statutes may be brought against our statutes relating to the amendment of equity pleading. Here again it is submitted that we would obtain better results by following the analogy of the law. Section 3804 and 2881 of the Code applies to law cases. They give perfect satisfaction and do not tend to postpone the trial of cases. Why should not similar statutes operate with the same success in Chancery? Instead of this our statutes make an amendment a cause for a continuance of the case. If our statutes relating to amendments in Chancery were the same as those relating to amendments at law, another source of delay would be obviated and an improvement in Chancery practice would be the result.

The manner of procuring testimony is another most serious defect in our equity procedure. Chancery rules carefully conceal the face, manner and personality of the witness from the judge who is to pass upon the credibility of his testimony. All testimony must be reduced to writing, and the cold inanimate writing is to be submitted to the Court to ascertain from it the true state of facts. Think for one moment of a jury's being denied the privilege of seeing and hearing the witnesses? How singular a practice would it be if the testimony in law cases had to be reduced to writing and the written testimony turned over to the jury for their decision. Such a thought is absurd. Yet one man is to be treated entirely different from

twelve when an equity cause comes to be tried. He must neither see nor hear the witness whose testimony he is to believe or reject. He is presumed not only to do the work of twelve men, but to do it under conditions and circumstances under which the twelve are admittedly unable to do it all.

The conduct of a witness on the stand, his bearing, his readiness or hesitancy in answering questions and his general demeanor have been known at all times to be important factors in passing upon his testimony. Evidence in every trial Court, whether presided over by judge and jury or simply judge, should be given orally if possible. The civil law so ordains, the Code states so ordain, the common law so ordains. All of our reason and experience dictate the necessity and wisdom of it. This rule of equity procedure does not comport with experience, reason and justice, and has nothing to support it, except the fact that it exists and has existed for years.

All this leads us to the question: Why should the trial of a case at law be so totally and radically different from the trial of a case in equity? We are unable to answer this question, except by saying that it's so because we have found it so. There is in fact no reason why it should be so. Chancery practice is without the entanglements that are incident to the jury system and can be made as superior to the practice that obtains at law as equity is superior to the common law. Cases in Chancery ought to be set for trial just as they are at law. Witnesses ought to be summoned to appear and testify on the day of trial. The pleadings should be ruled upon and disposed of without delay, and then the witnesses should be called, and the trial proceed precisely as in a law Court. No reason can be given why this should not be done in Chancery. It is

done at common law, under the practice of the Code states, and under the civil law, and everywhere with success. The present equity procedure in this respect is unique, is peculiar to the Chancery Court. It has no parallel in any other system of law, and its practical results do not commend its retention. A case in equity ought to be as speedily disposed of as a case at law. Our present practice permits a case in Chancery to last indefinitely. This is the cause of the prejudice against Chancery, and no doubt is one of the main reasons why in so many states an attempt has been made to abolish equity pleading. The procedure in Chancery does the admirable system of law that the Court administers the greatest injustice and places it at a disadvantage. Equity jurisprudence is defaced, almost deformed by a procedure which obstructs, impedes, delays and frequently denies the benefits of this Court to those who seek them.

We find upon analysis a great deal in our present procedure, both at law and equity to condemn. A book of voluminous proportions might be written pointing out defects and suggesting improvements. We are still plodding along with a procedure full of imperfections and shortcomings, frequently lending itself to defeat rather than further the claims of justice. Yet when we compare the present with the past, when we realize what those who preceded us, but a few generations ago had to tolerate, we must acknowledge that our procedure has undergone almost a complete transformation, and that the changes that have been made, have been a vast benefit to our laws and the administration of justice in general. Our procedure is in process of evolution, passing slowly but surely from under a mass of technicalities and refinements, and adjusting itself with the deliberation that marks the de-

velopment of all laws to the requirements of our present conditions, and to the only end for which procedure was invented. The work of reform has not been completed. Those who have gone before us have done much by discriminating legislation to remove many of the most glaring defects of our procedure. It is for us now to do our part, to push along the path of progress as carefully and judiciously as we can, until our procedure both at law and in equity has been relieved of the odium that has with reason attached to it for generations.

In furtherance of this object it would be well for a commission of learned and matured lawyers to take up this important subject, go over the ground most thoroughly and report and recommend to the legislature the changes that are necessary to bring our procedure, both at law and in equity, up to a standard, where technicalities, refinements and unreasonable delay have no place.



## DELAY OF THE LAW AS AN EXCUSE FOR LYNCHING.

BY

**HENRY E. GIPSON.**

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The writer of this paper has not been vain enough to think he has made any discoveries of fact pertaining to this subject. In fact, what follows has been thought, said, and discussed many a time heretofore. But it might be of some benefit to think of a part of them again. After such consideration as the writer was able to give the subject, it has been revealed to him, at least, that the remedies often suggested by newspapers and others,—changes in the statute law,—would not very materially work a better condition of our judicial system. The judicial system of Alabama is admirably adapted to secure justice to all parties litigants if enough respect, it might be said, could be instilled into practitioners before the bar to prevent them from treating the causes, in which their services are engaged, as a game of sport, or that there was no principle involved and the ends of justice were fairly met if he were successful in winning his case.

It does appear from such investigation as the writer has given, that all the objections and technical rules of law and practice, of which so much has been said as being for the sole purpose to delay and defeat the ends of justice, are absolutely necessary for the promotion of justice and

to fully protect the liberty of our people. As a general proposition, courts are able to distinguish between objections taken for the purpose of delaying the trial of causes and those which are valid. It is therefore, largely with the trial judges and the bar of the State to apply the remedy for such evils as truly exist and thus secure the more certain and proper punishment for crime.

The practice of lynching, for we may well say it has grown to be a practice, is an immediate result of a desire on the part of the public to mete out speedy and proper punishment for crime supposed to have been committed. This, we are glad to say, has been done mainly in cases involving the nameless crime committed against the helpless women of the land. Assaults on women are the only acts for which good citizens palliate the deeds of mobs, we may therefore eliminate the consideration of all other lynchings. Then, too, as we are concerned at present with the delay of the law, we may further trim the subject of another objection that is often urged by those in sympathy with mob violence,—that is, that it is a hardship upon the victim of this nameless crime to be compelled to appear in open court, and there before the curious public, detail the circumstances of her shame and degradation. And it may be said, by way of parenthesis, that this would, by many good citizens, be considered as the best excuse for lynching. In fact, the framers of our present Constitution seem to have recognized the validity of this objection, and authorized under due regulation, as may be proper in the discretion of the presiding judge, clearing the court room of all spectators,—leaving no one to hear the testimony save those directly concerned.

The delays most frequently complained of are those growing out of failure, at the trial, to observe some

rule of law, generally regarded as a technical rule, and thus causing an appeal to the Supreme Court to assert the rights of the defendant. This waiting for a hearing in the Supreme Court is where most of the complaint of delay is heard. It is this that causes some restless soul to pine to wreak vengeance upon the accused without a trial. It is such delays, so the objectors say, that cause them to take the execution of the law into their own hands and deal justice (?) to the unfortunate accused; they do not remember the prayer of the poet, Pope, when he said,

"Let not this weak, unknowing hand,  
Presume thy bolts to throw,  
And deal damnation round the land,  
On each I judge thy foe."

That there is some delay in the administration of justice in the courts throughout the land, there can be but one opinion. The world was not made in a day. In the many complicated cases that come into our courts, it is not surprising that some of them require time to ascertain the rights of parties. It must be admitted that errors are committed by trial courts, and cases are appealed to the Supreme Court where judgments are some times reversed and the cause remanded for a new trial; but when these cases are studied thoroughly, it appears that a wholesome respect on behalf of our court of last resort for well settled principles of jurisprudence is sufficient excuse for granting a new trial.

In the noted Gafford case, reported in 122 Ala. 54, the verdict of the jury in the trial court was reversed by the Supreme Court and the case remanded for a new trial because the trial judge made the mistake of refusing to permit witnesses for the defendant to testify to the fact of adultery alleged to have existed between deceased and the sister

of the defendant. (It is known to the members of the bar that John Gafford was prosecuted for murder, he having killed F. B. Lloyd.) When the facts of this case are spoken categorically thus, the acts of the judge appear to be a matter of small consequence, but when it was taken into consideration that it was necessary for the jury to have these facts before it in order to properly weigh and arrive at an intelligent estimate of the testimony offered by the defendant in support of his plea of self-defense, we are constrained to believe the Supreme Court simply adhered a known principle of law long since firmly established upon our system of jurisprudence for the protection of the liberty of persons accused of crime.

In conducting the new trial of this famous case, ordered by the Supreme Court, the trial judge made another error, for which the case was appealed the second time, reported in 125 Ala. 1, and for which error the same was again reversed and remanded for the third trial, and on this third trial, the defendant was acquitted. Yet, one can hardly examine this case carefully and say the fault is with the Supreme Court, or that the error pointed out by the Supreme Court is of such small consequence to the proper administration of criminal law that it could have been classed as harmless error and passed over without danger to the liberty of persons accused of crime. It must be remembered that the people who are very clamorous and vociferous in condemning the courts for the miscarriage of justice are at times a part and parcel of the courts, and they, with the judges and attorneys, share in dereliction of duty towards meting proper punishment for crime. In the Gafford case, already referred to, the jury sitting to hear the testimony and make a verdict at the third trial, with the same evidence upon

which two other juries had passed, one of which brought in a verdict of guilty and awarded death sentence, the other sentenced to life imprisonment, while the third jury, we say, found the defendant not guilty and acquitted him. The fault, so far as the juries are concerned in these matters, lies in the fact that a large number of the best citizens being unwilling to serve on juries of any kind. It should be constantly borne in mind that the juries under our system of jurisprudence are a part and parcel of the courts and are responsible in a measure for the short coming rightly chargeable to the courts.

Take another case, Johnson's case, reported in 102 Ala. 21, where the Supreme Court on application of the defendant reversed itself in the course of six months on a small (?) matter of drawing a jury. And yet no lawyer would read the opinion of Mr. Justice Haralson in that case and say that the error was harmless. In this case error was committed in drawing the jury, in such manner that neither the letter nor the spirit of the law was followed. The failure of the jury commission was, when the trial of the defendant came on, the jury box had been exhausted and was being refilled. The commission did not finish refilling the box according to law until sometime after drawing the jury to try the defendant. And for aught that was shown, or perhaps could have been shown to the contrary, the names drawn as jurors to serve in this case were the only ones in the jury box at the time. But there is no intimation that the jury that tried the case were not as good men as could have been drawn from the body of Jefferson county, but in the words of Mr. Justice Haralson, "if such a practice as we review were held to be lawful, it removes one of the safeguards provided by the legislature against the possibility of having an unfair se-

lection of jurors put upon a defendant." Yet in the minds of those persons who are looking for an excuse to mob a victim, this kind of technicality would be all they desired.

There seems but little merit in the proposition to overhaul our judicial system, and permit, yea, force persons accused of heinous crimes, to be tried on short notice. The cause of justice most certainly would not be subserved by forcing the accused to be placed on trial while the passions of the people are running riot against the supposed criminal. And too, it would frequently have the effect of depriving the accused of proper counsel, as in many instances the attorney would have no time to prepare his case. Again, it should be kept in mind that many of the objections and technical rules of law and court practice, that at first sight might seem merely captious and without merit, save to delay the case, are, as a matter of fact, well settled principles of law, which have been tried for many years and found admirably adapted for the protection of the liberty of accused persons. Without the orderly and timely proceedings to try an accused person, the courts would be in imminent danger of being converted into a legalized mob. It is well settled that the certainty of punishment is a greater deterrent of crime than the severity of punishment. It may well be said that the certainty of punishment is more horrible to evil-doers than rash, or severe and unusual treatment.

By many who have given this subject much careful thought, it is agreed that the remedy for lynching lies in easy command of trial judges and members of the bar, rather than in legislative enactments. It is pointed out that the presiding judge can by strict attention eliminate from the trial of causes all captious objections made by

counsel for the purpose of delaying the court, and prolonging the trial. On the part of attorneys, there should be an honest effort to bring the issue squarely before the court and try the case on its merits regardless of the petty objections and frivolous pleas that could be made. Any other kind of practice is unworthy of an honest man to say nothing of the unprofessional and illegal phase when done by an attorney at law. If all attorneys had and maintained proper respect for their oath as an attorney, and lived up to their rules of ethics, there would be little occasion for complaining of the delay in trying cases. Judges on the *nisi prius* bench admit their part in delaying causes for trial, of which there are few, it may be said, that can rightfully be charged that are harmful. It is therefore the duty of the practicing attorney to leave no stone unturned to instill a wholesome respect for the ethics of the profession and the laws governing the privileges of attorneys.

The efforts made by the Alabama State Bar Association to secure a better status, from a professional standpoint, of the Alabama Bar, is at present attracting much attention; and the Association is being congratulated by all good citizens, as well as by the profession, for the good results already shown. Along this line lies much, if indeed not the chief, good to be derived through this organization. And when attorneys live up to their obligations to the courts and the people, there will be but little cause for just complaint at the administration of either civil or criminal justice.

REPORT OF  
Committee on Judicial Administration and  
Remedial Procedure.

BY

JNO. C. ANDERSON.

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CASES SHOULD NOT BE REVERSED OR NEW TRIALS GRANTED FOR  
EXCESSIVE DAMAGES ALONE.

When damage cases are appealed to the Supreme Court, and the ruling of the lower Court was free from error, except as to excessive damages, the damages should be reduced and the case affirmed. Should such action of the Court be an invasion of the province of the jury and violative of Article 7 of the Federal Constitution, it may be that the damages could be reduced, with an option given the plaintiff of accepting, else case to be reversed. This seems to be the rule in Mississippi, and I have attempted to get some information on the subject from the Judge rendering the decision to that effect, but have been unable to hear from him.

Trial Judges should also be permitted to reduce the damage rather than grant new trials upon the ground of excessive damages alone. If a Judge has the right to say what is too much, why can't he say what amount is proper? It should be both the spirit and policy of the law to have justice administered by as few trials as possible. Frequent



trials of the same cause of action are troublesome and expensive and experience teaches that the facts are usually more fully and fairly developed on the first than on succeeding trials.

WITNESSES BEFORE THE GRAND JURY SHOULD BE DISPENSED  
WITH IN CERTAIN INSTANCES.

There can be a great saving to the fine and forfeiture fund of the various counties as well as a relief to witnesses by doing away, as far as possible, with witnesses before the grand jury. Require the reduction to writing of the evidence on all preliminary examinations and provide for its preservation and presentation to the grand jury, and make it legal evidence for the use of the grand jury. There is nothing in the Constitution to prevent this. It is true we have a statute saying all bills must be found on legal evidence and we could have a statute making this legal evidence. The Constitution gives the defendant the right to be confronted by the witnesses against him, but that does not apply to grand jury evidence, yet in this manner the indictment would be found on testimony given when the defendant did confront the witnesses on the preliminary, thus improving rather than decreasing his constitutional right. Such a law would lessen the attendance of witnesses and greatly reduce the drain on the fine and forfeiture fund, thus rehabilitating it and making the witnesses certificates more valuable when the witness was required to attend. Those of us who are familiar with the condition of this fund, know that it is greatly behind in nearly all counties and something should be done to reclaim it if possible.

Courts should be clothed with greater safeguards to punish the manslayer, who frequently gets off with little or no punishment. We are all cognizant of the fact that

courts meet with great difficulty in enforcing the laws against homicide, and which is due to many causes, some of which time alone can remove.

We think, however, that one of the chief causes for the escape of the guilty, is the present jury law.

Sufficient care and judgment are not used in placing the names in the jury box, as the average commission seems to think the only qualification required is that the juror must have a white skin and straight hair. Certain qualifications should be prescribed and enumerated as to the character of persons whose names are put in the box.

Again, the present venire system places the State at a great disadvantage, as it is to consist of the regular panel and not less than twenty-five or more than fifty to be publicly drawn previous to the trial. The defendant and his henchmen have ample opportunity to work on them and either get enough fixed to work an acquittal or prevent a conviction. It is almost impossible to convict a man for the proper degree of murder or to convict him at all if he has many friends or a family connection in the county. Why give the defendant twenty-one challenges and the State but fourteen? Why should jurors who possess the proper qualification be challenged by either side, except for cause, unless it be to gain some undue advantage?

A venire in capital cases should consist of twenty five, to be secretly drawn by the Judge, except in the presence of the Clerk and Sheriff, and whose names should be kept secret, under a penalty, until they are called to the box. Of course they will have to be summoned, but their identity can be concealed by making it a penalty for the Sheriff or jurors to divulge the fact.

Neither side should be given but five challenges and the regular jurors should not be included in the venire. The

Judge should be given some discretion in drawing the venire and be permitted to discard all names that he does not consider competent.

Some may contend that this gives the Judge autocratic powers; but would it not be far better to have a few autocrats than so many murders? Besides, I do not think a Judge in the State would pack a jury on any defendant, and all of them would be anxious to see both sides get justice. Unless there is a reformation of the present machinery, the red-handed man-slayer will continue to stalk our highways, will be a hero for the lawless element and a terror to the peace-loving, law-abiding citizen.

**ACT OF LAST LEGISLATURE FOR CALLING SPECIAL TERM OF COURT  
SHOULD BE AMENDED.**

The Act should be amended so as to permit the Sheriff, Clerk or Probate Judge to draw jurors for special terms. As the law now is the Circuit Judge has to make two visits, else stay at the county site idle for three or four days waiting to get the jurors summoned.

The statute is also ambiguous with reference to the power of the court to try indictments returned at that term.

It should be changed also with reference to notice to be given. As it is, the Clerk is required to mail each party and his attorney a record copy of the order calling the term. This involves a great deal of unpaid for labor on the part of the Clerk. A letter or postal to the attorney or parties, calling attention to the term would suffice.

**THE ABSOLUTE NEED FOR A REFORMATORY FOR YOUTHFUL CRIMINALS OF BOTH RACES.**

A most important matter that I desire to bring to the attention of this Association by way of conclusion, and

which I think comes under the head of Judicial Administration, is the punishment of youthful criminals.

It is a most deplorable fact that this class have been neglected so long by our lawmakers. Cost, race prejudice nor any other cause should deter us any longer from providing, if possible, for the reformation of youths of both races.

Only a few months since, I had a white boy age 16, and a little negro boy age 11, to plead guilty under a joint indictment for burglary. There was a chance to get the white boy in a reformatory under certain conditions, but no disposition could be made of the little negro except to send him to the penitentiary. In other words, there was a chance to get the 16 year old white boy in a chartered school of reform, but the 11 year old negro, who was doubtless influenced and controlled by the white boy, had to be either sent to the penitentiary or pardoned.

Neither of them should have been thrown back on the community by a pardon before some effort was made to reform them, yet neither of them should have been placed with hardened convicts during the period of their sentence.

I sentenced them both to the penitentiary but immediately wrote Gov. Cunningham, calling his attention to the deplorable condition confronting us, urged him to get the white boy in a reformatory, and suggested that unless he could do something with the negro boy other than have him remain in the penitentiary, that he should be pardoned. I was pleased to learn in a recent conversation with the Governor, that he had gotten the white boy in the reformatory and that the Board of Convict Inspectors would at once establish a reformatory for negro youths.

The proper care for and reformation of youthful criminals of every race, should be advocated by every lawyer in

the State. The State should not hesitate on account of expense when it comes to a question of so much gravity as this one. But expense can be no great barrier, as a very small per cent. of the earnings of the adult convicts would establish and maintain separate reformatories for both races.

JNO. C. ANDERSON,  
Chairman of Committee.

REPORT OF  
Committee on Correspondence.

BY

FREDERICK G. BROMBERG, CHAIRMAN.

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*To the President and Members of the Alabama State Bar Association :*

Your Committee on Correspondence have to report as follows :

UNIFORMITY OF LEGISLATION.

Your Committee regret that their repeated recommendations that a commission on uniformity of legislation be established by this State have not been concurred in by this Association (see report of 1901, page 140.)

With the establishment of said commission this Committee would have no further occasion to be continued, but could be finally discharged.

On the 28th of February, 1903, Arizona re-enacted the law providing for the appointment in that State of a commission to promote uniformity of legislation in the United States, to report to the Legislature of 1905.

On the 28th of March, 1903, Virginia passed a law establishing a permanent commission for the promotion of uniformity of legislation in the United States. Under this law the Governor appoints three commissioners for the

term of two years. The previous laws of Virginia provided only for temporary commissions.

Thirty-four States and one Territory have now permanent commissions. Amongst these the South is represented by the States of Florida, Georgia, Maryland, South Carolina and Virginia. As usual, in matters of legal progress, Alabama lags behind. The responsibility rests with the lawyers of the State,—primarily with this organization as the representative of the legal profession as a body.

#### NEGOTIABLE INSTRUMENTS ACT.

On the 7th of March, 1903, Montana established a Negotiable Instruments Law, uniform with the laws of other States.

On the 10th of March, 1903, Tennessee established a Negotiable Instruments Law uniform with the laws of other States. The Negotiable Instruments Law is now in force in twenty-one States and one Territory and in the District of Columbia.

President Eaton, of the Conference of Commissioners on Uniformity of Legislation of the thirty-four States and Territories, says, in his last report, that only forty-two cases had arisen under the Negotiable Instruments Law, in the courts, and of these forty-two cases sixteen had arisen in the State of New York, the great financial centre of the country.

The experience of England with regard to the Bills of Exchange Act has been similar.

These facts ought to be conclusive to the bar of Alabama, and lead to their demanding that the Bills of Exchange act be enacted into law in this State by the General Assembly of Alabama at its next session.

## HISTORICAL.

Your Committee cannot pass from the subject of the Bills of Exchange Act without protesting against the inaccuracy of all the published histories of the origin and inception of this act. One of the latest of these histories, and which would be regarded as authoritative by persons not conversant with the facts, because of the official position of the historian, appeared in the Michigan Law Review, Vol. II, No. 4, January, 1904. Its author is Amasa M. Eaton, of Providence, Rhode Island, President of the Conference of Commissioners on Uniformity of Legislation.

The account given by President Eaton, as well as all previous accounts of the origin of the Negotiable Instruments Law, have sought to prove that the law originated with the Committee on Uniform State Laws of the American Bar Association.

The origin of that Committee is shown in an article by President Eaton, in the Columbia Law Review of April, 1904, on Marriage and Divorce reform law.

From this article we learn that the American Bar Association was organized at Saratoga Springs, New York, on August 21, 1878. At its second meeting it was resolved "that the Committee on Jurisprudence and Law Reforms be requested to report at the next annual meeting of the Association a synopsis of laws of marriage and divorce in all the States and Territories and the District of Columbia, with such recommendations as they may deem expedient for bringing about more uniformity in such legislation\*\*".

It is to be noted that the only important subject then apparently in the minds of the Association, as shown by that resolution, was that of Marriage and Divorce; and that the matter of Negotiable Instruments had no place in



their consideration at that time. This was quite natural. The subject of Marriage and Divorce has been the most popular subject of discussion in the North for some time, and is still such in that section. The minds of the members of the new organization turned, therefore, first to that question.

It was not until 1889, eleven years after the organization of the American Bar Association, that it adopted the following resolution :

“Recognizing the desirability of uniformity in laws of the several States, especially those relating to marriage and divorce, descent and distribution of property, acknowledgment of deeds, execution and probate of wills; therefore be it

“*Resolved*, That the President of this Association appoint a Committee consisting of one from each State, who shall meet in convention at a time and place to be fixed by the President and compare and consider the laws of the different States relating to these subjects, and prepare and report to this Association such recommendations and measures as will bring about the desired result.”

Under this resolution a committee was appointed, consisting of forty-two members, one from each State.

It is to be noticed that the only subjects mentioned as those in which uniformity was desirable were marriage and divorce, descent and distribution of property, acknowledgment of deeds, execution and probate of wills. There is not a word in the resolution about negotiable instruments, or commercial law in any shape, form or manner. The Committee was not even made a permanent committee of the Association, like your Committee on Correspondence of this Association, but was appointed

annually by the President, and was made one of the standing committees for the first time in the year 1908, fifteen years after the organization of the Association the Constitution of the Association having to be changed before this could be done.

This Committee (on Uniform State Laws) made its first report in the year 1890. They reported that the State of New York had passed an act authorizing the Governor by and with the consent of the Senate, to appoint three commissioners for the Promotion of Uniformity of Legislation in the United States, "to examine the subjects of marriage and divorce, insolvency, the form of notarial certificates, and other subjects; to ascertain the best means to effect an assimilation and uniformity in the laws of the States and especially to consider whether it would be wise and practicable for the State of New York to invite the other States of the Union to send representatives to a convention to draft uniform laws to be submitted for the approval and adoption of the several States, and to devise and recommend such other course of action as shall best accomplish the purpose of this Act."

"The Committee recommended the passage by each State and by the Congress of the United States for the District of Columbia and the Territories, of an act similar to the above, inserting further, as proper subjects requiring uniformity of legislation, 'descent and distribution of property, acknowledgement of deeds, execution and probate of wills.' They recommended also that the Secretary be instructed to cause the report and accompanying resolutions to be printed and to send copies to the members of the General Council, the Vice-President and to the members of this Committee in each of the States and Territories and District of Columbia, with the request that they

unite in preparing, presenting and securing the passage of a similar bill in their respective States and Territories. The report and resolutions were adopted." (Columbia Law Review, April, 1904.)

Here again it must be noted that the subjects proposed for uniformity of legislation were restricted to "descent and distribution of property, acknowledgement of deeds, execution and probate of wills." There is not a word in this report upon the subject of Negotiable Instruments, or even commercial law in any of its phases.

The second report of the American Bar Association Committee was made in 1891, stating that it had been impossible for the members to meet in convention. This report showed that nothing had been done by the Committee as such, but that a circular letter had been issued by the Chairman to the members of the Committee, and to others, making inquiry as to subjects and methods for uniformity of legislation.

Whilst such was the status of the subjects of negotiable instruments and commercial law in the American Bar Association, this Association, through this Committee, as early as August, 1886, six years before the subject of the negotiable instruments act was ever mentioned by the American Bar Association Committee on Uniformity of Legislation, had sent a circular letter to the Secretary of every Bar Association of the United States, and to the Secretary of the American Bar Association, which we reprint here, because of the time which has elapsed since it was first printed in our reports, and because of the fact that most of the older reports of this Association are inaccessible to all recent members because out of print.

*To the Secretary of the.....*

*State Bar Association.*

SIR: At the December (1881) meeting of the Alabama

State Bar Association, there was created a Committee on Correspondence, whose duty is to correspond with officers and committees of other Bar Associations, for the purpose of causing concerted action of the same relative to law questions of National importance.

The present committee believe, that there is already a common understanding reached by the Bar of the United States, generally, as to what are questions of National importance, respecting which uniform laws throughout the United States are desirable, so that further discussion, in this communication, is unnecessary upon that point.

The principal amongst these questions are those concerning conveyances of land, attestation of wills, marriage and divorce, and negotiable instruments.

The most direct way of accomplishing the desired uniformity would be, apparently, by amendments to the National Constitution, conferring the necessary powers upon the Congress to legislate upon these subjects.

The practical difficulties in the way of attaining amendments are so great, however, as, if resorted to, to result in indefinitely postponing the uniformity.

It seems, therefore, preferable to confine our efforts to securing uniformity in law questions of National importance to independent State action, and to attack the questions separately, beginning with that, respecting which the nearest concurrence already exists.

That fulfilling the latter condition, seems to be the law of negotiable instruments, which can be, probably, rendered harmonious throughout the States with less difficulty than any other.

It has the advantage, also, of being that branch of law in which the whole commercial world is interested, irrespective of National boundaries, and of having extra territorial effect, through the fact that the larger part of the world's commercial transactions are based upon credit, and commerce and end not only in different jurisdictions, but also in different nationalities.

This fact has led to our having in this country two distinct systems of commercial law enforced side by side, in many, if not all the States of the Union.

One of these is the general law, as expounded in State decisions and enforced by State Courts; the other, the same law as expounded by the Supreme Courts of the United States, and followed by the inferior Federal tribunals within the State, in disregard of the State decisions, even in cases wherein the contract, from its inception to its end, has its locus wholly in one State. This anomaly is the necessary result of the complex nature of the larger part of the contracts evidenced by negotiable instruments, growing out of the fact, that they represent, frequently, transactions in two or more States; and of the necessity imposed upon the Supreme Court of the United States of having uniform rules of decision. These they cannot have, if they are to give effect to the decisions of the respective State courts, or are to respect the State decisions at all. If our State decisions were uniform, there would be no pretext for a distinct law for the Federal tribunals, and we should have harmony between State and Federal decisions.

This is of more importance now, because the general law has ceased almost to exist in England, the commercial centre of the world, and has become there a thing of the past, by the adoption of a code, nearly covering the whole subject of negotiable instruments.

The facts that England has a code and is the financial centre of the world suggests, that it is desirable to have any proposed uniform law of negotiable instruments, uniform with that of England. Whilst striving to attain uniformity in the States, we can as easily, at the same time, attain uniformity with England. If we do this, our task will be comparatively easy. The new English code need be changed only in formal matters to become a model for us.

This committee suggest, that it be recommended for adoption to the Legislatures of the respective States.

This code is known as the "Bills of Exchange Act of 1882."

This committee believe they can add nothing in the way of argument in advocacy of its adoption, to what is said by Judge Chambers, one of the codifiers, in No. 6

Law Quarterly Review, April, 1886, p. 125, and they refer to that address in support of this communication.

Respectfully requesting your Association's views in reply,

We remain yours,

THE COMMITTEE ON CORRESPONDENCE,  
Alabama State Bar Association.

August 20, 1886.

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MEMBERS OF THE COMMITTEE.

FREDERICK G. BROMBERG, Chairman, Mobile, Ala.  
HARRY PILLANS, Mobile, Ala., JOHN F. WHITE, Selma, Ala.,  
Z. M. P. INGE, Mobile, Ala., A. D. SAYRE, Montgomery.

Favorable replies to this letter were received from several of the Bar Associations. There is no doubt that it was this letter which first called general attention of the profession throughout this country to the existence of the codification in England, known as the "Bills of Exchange Act."

In order to aid the purpose of this circular letter, this Committee, as a part of its report in 1886, embodied the English bills of Exchange Act, *verbatim*. There is no doubt that whatever knowledge the profession in America acquired of said act was derived from this publication, because no copy of the English act could be procured by your Committee in this country, but they had to import a copy from England, for the purposes of their report. We have a right, therefore, to claim that the American Negotiable Instruments Law originated in this Association in 1886, and not in the American Bar Association in 1891, and that the history of the Negotiable Instruments Law should be written accordingly, if it is to be a true history.

CHILD LABOR.

An effort is being made by an organization in the North,

known as the Consumers League, to procure the enactment of a standard Child Labor Law, for the protection of children whom circumstances compel to be worked by parents or guardians.

This League has its headquarters at 105 East Twenty-Second Street, in the City of New York.

Were the suggestions of the League followed, the result would be a uniform law in the States regulating the subject of child labor. The proposed law is printed in full in the League's Hand Book for 1904. It embodies the best provisions of the laws of the States of Massachusetts, New York and Illinois, on the subject.

Were this standard law the law of all the States, Alabama could rest easy in the knowledge that no other state was outbidding her for manufacturing investments with cheap labor, derived from the employment of children.

#### MARRIAGE AND DIVORCE.

The subject of a uniform law of marriage and divorce in the States of the Union, which appears to have been uppermost in the minds of the organizers of the American Bar Association, at the time of its organization, in 1878, is that in which the least practical progress has been made towards uniformity of State laws. Nothing has been done by any State in that direction since Minnesota and New Hampshire enacted a law to "Prevent Fraudulent Divorces," as recommended by the American Association in 1882.

Whilst the question of divorce is important, it is satisfactory to our State pride to be able to say that the evils of divorce have not reached a magnitude in Alabama such as to make the thing a burning question. Whilst we have large numbers of divorce cases in the courts, the parties thereto are mostly from the lowest ranks of life.

Probably, everywhere in those parts of the State where the negro is numerous, the parties to divorce proceedings are almost entirely derived from that portion of the population. It cannot be said that divorce is an evil in such cases, because it lessens the tendency to immorality, which would inevitably result were the relief of divorce withheld or made very difficult to obtain.



REPORT OF  
Committee on Legislation.

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*Mr. President and Members of the Alabama Bar Association:*

The Chairman of this Committee, Hon. J. J. Mayfield, being unavoidably absent, the Committee beg leave to report as follows:

WHEREAS, Under the present Constitution of Alabama the sessions of the Legislature are quadrennial, instead of biennial as heretofore; and, whereas, the next Legislature of this State will not assemble until 1907; and, whereas, there will be two regular annual meetings of this Association to-wit: in 1905 and in 1906, before the next session of the Legislature—

THEREFORE, The Committee on Legislation, deem it useless and of no purpose to make any recommendations to the Association, for legislation, at this time.

Respectfully submitted,

R. F. LIGON,  
RAY RUSHTON.

## A JUST AND FEARLESS JUDGE — JOHN MOORE.

BY

S. W. JOHN.

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When I read the announcement, that, Judge John Moore had been suddenly stricken with paralysis and was dying, there came to me, unbidden, the famous words—"a great man has fallen."

When I read further, that, he had but a few hours before been on the bench holding Court, I remembered that he had often expressed the wish that he might have strength to work on to the day of his death, or as it is beautifully expressed by the poet—

"My body with my charge lay down  
"And cease at once to work and live."

Thus his desire had been gratified and his pure noble soul had passed, swiftly from an Earthly to an Heavenly Court, from the judgment seat to the judgment bar.

In writing of him, as a judge, it will not be amiss to consider briefly the circumstances of his life, before he became a judge, for these shed light upon the formation of that character, which afterward stood out in bold relief in the Judge.

He came from a hardy, bold, courageous people, who had enterprise and spirit to go into an almost unbroken wilderness, and there make for themselves and children homes—such homes as will never more be seen by mortal eye.

When they had made these homes, they as diligently set about building churches and schools for the proper training and education of their children.

Chief among these schools,—the real head of them all, was the University of Alabama, and when John Moore was ready to enter college, his mother being profoundly impressed by the high Christian character of President Manly and the Faculty of the University, and with the characters of the young men who had then been graduated from the University, and with whom she was acquainted, notably the Fosters, influenced her son to attend the University.

His course there was an honorable one, which he always remembered with pleasure.

When the Alumni organized at the Semi-Centennial Commencement in 1881, Judge Moore was elected President of the Society, and through life was always interested in the welfare of his Alma Mater.

Immediately after graduating at the University he read law and began the practice at a bar, then led and controlled by some of the best men, and highest type of lawyers, that ever adorned the profession, or gave tone to public sentiment.

With these lawyers, in a refined, cultured community, before upright judges, he labored, lived and loved his fellow man, till the breaking out of the Confederate War, when he volunteered and, except the time he suffered in prison, served in the army of his country, till the great "surrender."

He returned to the practice of the law in the fall of 1865, and in May, 1866, he was elected Judge of the 1st Judicial Circuit then composed of the counties of Autauga, Bibb, Dallas and Perry.

It is worthy of note, that, this was the last election of judges, at an election held for the purpose, only, of electing judges, and at which no other officer, State or County, was voted for. Also, that, this was the only time, out of the five times Judge Moore was a candidate before the people, that he had any opposition, and in this race, which was run only a year after the end of the war, his opponents chief argument, why Judge Moore should not be elected, was—that, he had been a Confederate soldier. I need not tell you he was triumphantly elected, and began his life as a Judge.

The first unusual ruling, made by Judge Moore, and that, then stamped him as fearless and just judge, was his refusal, to allow the Solicitor to enter a nolle prosequi, to an indictment pending in Judge Moore's Court.

This ruling created no little stir, and called out much comment, but was almost unanimously approved by the Bar.

Nothing came of it at that time, but more than a year afterwards, when the Solicitor who was thrust into office under an Act of Congress, by the bayonet, was indicted for bribery, this ruling of Judge Moore's was recalled, and with the result that the Solicitor, who had been refused permission to enter a nol pros by Judge Moore, was indicted for receiving a bribe, in that case.

You may ask, how it was that Judge Moore refused to allow the Solicitor to take an order that is usually granted as of course? Had he received any information that there was anything wrong about this matter?

My reply is that he had not any positive information but he was a thoroughly honest man, and could "sniff corruption from afar."

Though these times were sadly out of joint and full of

trouble, and desperate deeds of blood fell thick and fast, so that very many men never stirred from home, without arms, yet Judge Moore never allowed arms to be brought into Court.

At the Spring Term of the Dallas Circuit Court, 1868, the business of the Court was being transacted as quietly and orderly, as it can be done now in any Court.

No murmur of coming storm had been heard.

No one apprehended that a great wrong was about to be done. No one even surmised that the temple of justice was about to be invaded by armed soldiers, and its judge threatened with removal from the bench, if he did not rule upon the qualifications of jurors, as directed by a General in military orders. All was peace and quiet, when suddenly a corporal's guard of soldiers, commanded by a Lieutenant of the U. S. Army with drawn sword in hand, marched into the Court and halted in the space between the jury box and the judge's bench, then came the order—"Order Arms," from the Lieutenant, with his back turned to the judge, who then faced about and with a salute of the sword, insolent in its manner, handed to Judge Moore on the bench, an order.

A copy of this order and of Judge Moore's reply, have since his death been published by his son, and that they may be read in connection with this paper, and be preserved, I attach copies hereto.

Judge Moore took the order with the same calm, dignified manner, that he would have taken a paper handed him by an attorney, or officer of Court, and with a steady hand opened and with an unchanged countenance read it, and then as quietly as though he had read an ordinary letter said to the Lieutenant—"As this requires an answer in writing, I will take time to prepare it, and will then hand it to you."

Whereupon the Lieutenant marched his soldiers out of the Court room, and then Judge Moore asked the Bar to meet and appoint a committee to confer with him about the matter, and then adjourned the Court for the day, as though it had been the regular hour for adjourning.

A large and representative committee of the Bar met Judge Moore, and after a full and free discussion of the unprecedented communication, and threat, the Bar, with Judge Moore's approval, appointed a committee of three to call on the General commanding the Third Military District.

Upon the return of this committee they reported their interview with the General very fully to Judge Moore and the Bar, and that the General had said that Judge Moore had ruled right, as the law then was, but that he could not withdraw the order nor modify it materially.

Then it was that Judge Moore sent General Shepherd his reply, which is in itself sufficient to show that the writer was a fearless judge, who would lay down his office before he would violate the law of his land or make an unrighteous ruling.

Shortly afterwards he closed his Court and involuntarily retired from the bench because he could not resist the army moving under an Act of Congress, not again to resume it till after the lapse of years, when his people "coming to their own," elected him to be judge over them and continued him in this high office, without opposition, till his death—a few weeks after his unanimous nomination for that office for the fifth term.

During the twenty-six years, nearly, that Judge Moore was on the bench, before and since "reconstruction," he was ever courteous, kind, dignified and just.

He manifested marked peculiarities in his dealings with

the very great number of men with whom he came in contact in court, and while any one who knew him could always tell when his mind was rejecting a specious or false argument; could always see when he had a loathing for the low, mean and false, yet his tone and words were always proper and such as were becoming in a just judge.

In the trial of criminals, while he was fair and considerate, he never feared to charge the law, "straight and strong," and never gave a jury an invitation or chance to acquit a guilty person.

Probably the best evidence of his fearless conduct on the bench, is so well stated in the language of Chief Justice McClellan, that I make no excuse for quoting it literally :

"The bill of exceptions contains the following remarkable statement:—The counsel for the defendant in their arguments to the jury said in substance to the jury, that 'the defendant ought to have killed Nicholson, that he did right in doing so, that every man on the jury would have done the same thing. That he was simply defending the virtue of the wife and daughters of every juror and every other white man in Bibb county, and the jury owed it to their wives and daughters and all the women in Bibb county, to acquit the defendant. That defendant had done nothing but what every man on the jury and every other man would have done. That it would never do to convict the defendant, and it would never do to let it go out to the world that a Bibb county jury had convicted a man under such circumstances.'

"That the people of Bibb county and public opinion everywhere would sustain and uphold a verdict of acquittal.'

"That Nicholson would have been hung if he had been indicted, and that the defendant had done the county a service in killing him by saving the county the delay and expense incident to the trial and conviction.'

"Their entire argument was an appeal to the jury for an acquittal on the line stated:

"It is much to be regretted that counsel, who are officers of the Court and under a special and solemn duty to support and uphold the law and to conserve its due administration by courts and juries, should thus in the zeal of advocacy or under the bias of extreme partizanship, so far forget their duties to the Courts and to organized society as in effect to call upon jurors to disregard their oaths, to trample under foot the law which they themselves, as members of the body politic have participated in making for the just and equal protection of all the people, and to try and determine this cause upon considerations which the experience and wisdom of the ages have demonstrated to be subversive of all order and authority, and logically leading to the substitution of private vengeance, the retribution of the assassin and the terrors of anarchy, for the law of the land and its ministers.

"It is deplorable to the last degree that counsel charged to aid jurors, should seek to turn them from the plain road of the law, leading to manifest justice, into the devious and noxious by-ways of prejudice and passion and perjured conscience leading to an acquittal of a self-confessed murderer, and even beyond this, his commendation as for a service rendered to the county in that he had decoyed one of her citizens within the easy range of his rifle, and from behind his back, brutally shot him to death.

"It is to the credit of the county of Bibb that her jurors were not swerved from their duty by these illegitimate appeals and asseverations; and it is to the credit of the judiciary of Alabama, that the learned judge who presided at the trial took occasion to uphold the dignity of the bench and the reign of law in his charge to the jury in these words :"

"Courts are established to administer the law and enforce its execution- The law is the only standard by which judges can be governed; and in considering their verdict jurors should be governed by the law as given them and by the evidence. The only protection to the life, liberty and property of the citizen is in a prompt, honest and impartial enforcement of the law, and if juries should inten-



tionally and wilfully disregard the law, then the law is useless, and the court houses and jails might as well be torn down, the offices of judge, clerk and sheriff, and all other machinery necessary for the administration of the law be abolished, and save the people the tax paid for maintaining and carrying on the courts.'

"The judge was well within his powers and rights in thus attempting to remove from the minds of the jurors the poison of the unwarranted appeals of counsel to their passions and prejudices and to bring them back, if indeed they had been led astray, to a trial of the case upon the law and evidence.

"It is of no consequence upon the rights of the judge in this connection that no objection had been made to these orations of counsel when they were delivered. Nor is it of consequence that the Solicitor replied to them. Doubtless he did, and efficiently, demonstrating the folly of indulging in such tirades when able counsel are to follow.

"Notwithstanding this the judge had his duty to discharge in clearing the skirts of justice of these alien and baneful contentions of counsel."—130, a. p. 114-16.

This is sufficient in itself to show him to have been a fearless and just judge, but there is one other judgment of his which should be preserved in our memories and treasured up for the instruction and encouragement of our Bench and Bar.

A negro was tried and convicted before Judge Moore for the murder of a white man who was at the time the chief deputy of the Sheriff of that county.

The verdict was that the defendant should suffer death. Judge Moore was shocked, yet no one in court at the time knew it.

With his usual calm, quiet dignity, he ordered the prisoner to jail to await sentence.

Judge Moore was troubled, sorely grieved, but he did not halt or hesitate.

He did not for one moment consider the fact that the dead man was white, a good citizen, a member of a large and influential family and a faithful, reliable officer of the law.

He considered all the evidence that had been introduced and this was not sufficient to sustain the verdict, and he promptly, firmly set it aside and granted a new trial, thus saving from an ignominious death an innocent man.

This was not popular, but met with the unqualified, hot condemnation of some who afterwards regretted their hasty, unjust judgment of this fearless, just judge, and to their credit they said so openly.

Judge Moore was born in a family of slave owners of the best class, and he was an owner of slaves till they were emancipated, and it is not necessary to say that he was a kind, just master, more like a father than a master, and when the negro was freed and came into the jails and courts by the hundreds, he never lost his patience, never was unmindful of their condition, but tried them fairly, judged them mercifully, yet never under any circumstances would he jest with a negro. This was his rule of conduct and the negroes who knew him had a very high regard and reverence for him.

He resented the idea that, the negro could not get justice, because of his race, and cited many instances which had come under his own observation, wherein the negro, had won verdicts, at the hands of white juries, against white men, and particularly two instances, where an indictment had been found on the testimony of a wealthy white man, against a negro for a felony, and a civil suit grew out of the same transaction. The juries in both cases believed the testimony of the negro, and found accordingly, against the white man.

These remembrances of this fearless and just judge cannot reach his cold ear.

They cannot in the least change a line of his noble life well lived.

They are not written for that purpose, but are here recorded that, they may preserved where they can be read by those who are to follow him, with the assurance that, the remembrance of them will give encouragement to every man, desiring to be a just and fearless judge.

Those who consider Judge Moore's life work, will see that his strong love of his fellow man, made him a just judge and that this love kept him from making decisions, which took from the people, rights, and gave to the rich and strong, privileges, contrary to justice, right and the Constitutional guarantees, ordained by our fathers, when they were free, for the preservation of the liberties of their children.

They should also remember that, every judge who is now called a "great" judge, earned this appellation because of decisions that infringed upon the rights and liberties of the people and augmented the power and possessions of the few, and for this they are called "great" judges.

Judge Moore would rather by far, be known as one who loved his fellow man and therefore was careful to protect the rights of the citizen and leave him and his children with all of their rights and liberties, than earn the title of "great" judge by deciding in favor of consolidated wealth entrenched in power.

There is another marked characteristic of Judge Moore, that, should be remembered and followed—though an ardent Democrat, in the very best sense of that little understood term, he never engaged in party politics, while he was judge—never served on Executive Committees, nor

Campaign Committees, neither was he ever found haunting the "lobbies" of the Legislature, asking for an increase of his salary.

His name is enrolled forever among those who loved their fellowmen.

His epitaph has been written by a loving devoted son and it is *true*, and with it I close these remembrances of a fearless and just Judge:—

"A man he was, God gave him, then called home  
The soul—He lent to teach us truth and trust  
Above his breast lies no unhallowed loam  
Upon his name there is no dust to dust."

HEADQUARTERS SUB-DISTRICT OF ALABAMA,  
DEPARTMENT OF CIVIL AFFAIRS,  
MONTGOMERY, ALA., March 21st, 1868. }

*Judge John Moore, 1st Judicial Circuit, Selma, Ala.,*

SIR: In compliance with instruction from the Commanding General, Third Military District, I am directed to state that the Major General views your instructions to the Sheriff, to confine his selection of jurors to white persons as an infraction of G. O. No. 53 and 55, Series of 1867, and that, unless you are willing to acquiesce in this decision you will be removed from your office.

A prompt reply is respectfully requested.

I am, Judge, very respectfully,

Your obedient servant,

O. L. SHEPHERD,

Brevet Brig. Gen., U. S. A., Com. Sub-District.

SELMA, ALA., March 24, 1868.

*Brevet Brig. Gen. O. L. Shepherd, Com. Sub-District of Alabama, Montgomery, Ala.,*

SIR: Your communication of the 21st inst., informing me that my action, in confining the Sheriff in the selections of jurors to the white registered voters is regarded

by Major General Meade, commanding the District, as a violation of the General Orders, Nos. 53 and 55, Series of 1867 and that if I am not willing to acquiesce in that decision I will be removed from office, &c., was received by me this evening.

I beg leave to state that so long as I was permitted to comply with the laws of this State by selecting as jurors men of "intelligence, impartiality and honesty" who were registered voters, I felt it my duty to hold the Courts, as the justice would be thereby attained.

But I cannot consistently with my duty and obligation as a judicial of the State consent to put negroes on the jury, in violation of these laws and to the detriment of justice.

I cannot therefore carry out the construction now given to these orders by the General Commanding the District requiring me to put negroes on the jury, under even the penalty of removal from office.

As the judiciary of the State is powerless against military force, I am constrained, however great the wrong, to submit to it.

I shall therefore discharge the juries tomorrow morning and transact no business except as is necessary to the winding up of the Court.

I am, General, very respectfully,

JOHN MOORE,  
Judge First Judicial Circuit.

## REPORT OF Central Council.

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MONTGOMERY, ALA., July 8, 1904.

*To the President and Members of the Alabama State Bar Association:*

The Central Council of your Association respectfully beg leave to submit the following report:

During the year since your last meeting a number of matters of considerable importance have been brought to the attention of, and been considered by, said Central Council. It was met, at the outset, by the report of its predecessor, calling attention to charges preferred against one of the members of the profession in the state, who, although not a member of this Association, had occupied for a number of years a prominent place in the ranks of the profession, and had had entrusted to him causes of importance both with respect to the amount involved and the questions for determination, as to which the preceding Council had taken no direct steps nor instituted any proceedings for his removal from the bar, while charges against him had been in its possession for several months. This was, in no sense, the fault of said Council; but was mainly attributable to the unsettled law of the State, affecting such questions as arose in this matter, and to the unwillingness or inability of individual members of the Association devoting to the case such attention as it deserved and as its trial would necessarily demand.

Reviewing this state of things, your Council deliberated to find some method by which, both with regard to the case under consideration and to those which might hereafter arise, the difficulties and delays of a proper presentation and prosecution of such accusations might be overcome, and their hearing be conducted with certainty and profitable results. They finally determined that the best means of doing this consisted in obtaining legislation, which would make it an official duty of the proper officers of the State for the administration of its criminal jurisprudence, and thus not leave it to the choice or reluctant duty of individual members of the Association; and in accordance with this plan a bill was prepared and introduced into the last Legislature, providing for a thorough amendment and overhauling of the statutes previously existing in reference to this matter, in order to accomplish the ends in view.

#### NEW DISBARMENT LAW.

By the aid of members of the Legislature familiar with such subjects and alive to the significance and urgent need of such a measure, and the active influence and agency of the President and Secretary of this Association and others of its membership, a statute, found on page 346 of General Acts of Alabama, 1903, approved October 3, 1903, was enacted, which, it is hoped, will meet the requirements of this subject.

Soon after it went into effect your Council took up the case which had been turned over to it by the preceding one. This soon resulted in the accused party availing himself of the provision in Section 2 of said Act for the surrender of his license as an attorney in all the courts of the State of Alabama, which surrender was duly presented

by this Council to the Supreme Court of the State, and a proper record made thereof under the terms of said Act.

This was followed by accusations against other members of the bar, and in the several cases shown by the list made a part hereof a like course of surrender of license was adopted by the persons accused. In two cases brought to the attention of this Council, and in answer to the notice, which it thought but just to accord to the accused before taking any action which might affect their professional standing and honor, the charges have been denied, and the facts, upon which such charges were based, have been disputed. Where this is the case, your Council had but one course open to it; and that was to submit the determination of the issues of fact to the tribunal empowered by law to determine it. In these two cases, the sworn accusation and the statement of facts provided for in the Act referred to have been delivered to the Solicitor of the Circuit, in which the accused resided, for proceedings under said Act.

#### NUMEROUS CASES FILED.

It is not to be wondered at, that the enlarged powers conferred by the Act mentioned upon this Association and its Central Council should result in a number of charges, of differing merit and of varied character. Some of these manifested on their face, that only the gratification of malice or crude conception of the responsibility of an attorney and the reasonable obligation to him of his client could have instigated their presentation. Others referred to transactions of a very remote period—one going back to 1856 and where all of the parties save the accuser and an attorney who could not have been long in the possession of his license, had been long in their graves.

By an Act, entitled An Act to prevent the encourage-



ment of litigation and provide for the punishment of persons engaged in encouraging litigation, approved March 4, 1901, the law-makers of this State took steps to prevent or cure an evil, which has grown to great proportions in this State, and which more than anything else has operated to debauch the profession, lower its tone and excite controversies between those who engage in such practices, than any other cause.

#### RUNNERS FOR LAWYERS.

The practice is said to have been common for attorneys in some parts of the State to have agents, or runners, in their employ, to whom they paid a consideration for their services or agreed to divide the spoils of judgments which might be obtained, in order to procure suits and engagements. Suits for personal injuries furnish the principal exhibition of this pernicious practice. It is not meant by this to imply that all suits of this character are frivolous and without merit. In many instances the contrary is true. But when such a rivalry is in existence, it is not likely that those who seek and obtain such cases will calmly consider or impartially determine the truth or merits of such demands and separate the good from the bad, the just from the unjust, and the lawful from the frivolous.

Those who chiefly complain on this subject are the railroads and industrial corporations, whose works, ways, machinery and methods of operation cause the greater number of personal injuries. While they have much to support their complaints, it must not be lost sight of that, if their own action did not produce the present state of things, it has been no insignificant factor in bringing it about. While they assert, on the one hand, that a certain class of attorneys by their agents and strikers are ready,

like vultures, to pounce upon every unfortunate who receives an injury, whether great and permanent or temporary and trifling, and secure their employment by him for suit or compromise of his demand; it must not be forgotten that this same class of attorneys claim that their action has been induced by the management of such corporations, long before the present methods of attorneys came in vogue, in sending out their hirelings, detectives and claim agents, who, by threats, promises, persuasion and the necessities of the injured passengers or employees, obtain or force from them releases of damages and acquittances for wrong doing, when they were unable to obtain counsel or too ignorant to understand their rights, or when they had already employed counsel, effect settlements without the knowledge of the latter.

#### TO PUNISH SUCH ACTS.

So far as the members of the legal profession are concerned, the Legislature has already, in the Act last mentioned, undertaken to restrain or punish such censurable acts, and this Council has considered cases on this subject, and acted thereon, as the evidence seemed to warrant. The fault on the other part might be corrected by refusing effect to any release on the part of a person injured, which was not made by the advice of counsel, or before the extent of the injuries was ascertained, or in permitting the amount paid for such release of damages to go only as a credit on the amount, to which the plaintiff was entitled, as ascertained by the verdict and judgment of the courts and juries of the country, in actions brought within a prescribed time, and in securing counsel a lien for their agreed compensation.

There is appended hereto a list of all cases that have

been brought to the attention of this Council, their action thereon and the results that have already occurred.

This Council has furnished the Secretary of the Association with a list of those who are applicants for admission into this Association, together with its recommendations thereon.

No other matters proper for their consideration have been submitted to them.

Very respectfully,

THOS. R. ROULHAC, Chairman,

W. W. CALLAHAN,

CHAS. P. JONES,

A. S. VAN de GRAAFF,

Central Council, Alabama State Bar Association.

Colonel Roulhac explained that the report was not signed by E. K. Campbell, the fifth member of the Council, because of his absence from the State.

## RETROSPECT

BY

**ALEXANDER TROY,**

*Secretary of the Association.*

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*Mr. President and Gentlemen of the Alabama State Bar Association :*

A few years ago, I received a letter from Mr. Francis Rawle of Philadelphia, at that time Treasurer, but later President of the American Bar Association informing me that the report of the Ninth Annual meeting of this Association was missing from his set and requested me to send him a copy of the same. Having previously distributed all the copies of that meeting I made some effort to find a copy but failed to do so, which failure I reported to him. Mr. Rawle again wrote to me offering to pay any reasonable amount for a copy of the proceedings of this Ninth meeting as he was very anxious to have his set complete. I then made further effort to procure a copy for him, writing to attorneys in different parts of the State in my endeavor to procure a copy, having signally failed to find one in any of the offices or libraries in Montgomery which I could get. The experience I had and the failure I met in trying to secure a copy of this meeting led me to the conclusion that the proceedings of all the early meetings were thrown away and that there are few, if any, now in existence. This conclusion was accompanied by the reflection that as this Association had been in existence for more than twenty-five

years, a brief history of it would not be at this time altogether wanting in interest to the members of the Association.

To Col. D. S. Troy is due the credit as the mover in the matter of the organization of the Association and he may be justly regarded as its founder. He had during the summer of 1877, while at Saratoga Springs, attended a conference of lawyers which resulted in the organization of the American Bar Association and he believed that the organization of the lawyers of this State would result in great practical good, not only to the lawyers but to the public generally, and while sitting at his desk in the Senate Chamber, wrote out and sent by a Page to the lawyers in the Senate and House of Representatives, for signature the following:

"MONTGOMERY, ALA., Dec. 18, 1878.

"The undersigned members of the legal profession, believing that the formation of a Bar Association of Alabama is desirable, respectfully request the members of the Bar of each county to appoint one or more delegates to attend a Convention of the Bar of the State, to be held in the Hall of the House of Representatives, on the 15th day of January next, at 7 p. m. and that E. W. Pettus and Wm. M. Brooks, of Selma and W. L. Bragg of Montgomery are requested to prepare a plan of organization to be submitted to said Convention."

This was signed by thirty-eight of such members of the Senate and House of which number at least twenty-five or more are now dead. On this list we find the names of W. G. Little, Jr., David Clopton, A. C. Hargrove, W. E. Clarke, D. S. Troy, John T. Heflin, Gaylord B. Clark, John Little Smith, Wade Keyes, E. J. Fitzpatrick, T. M. Arrington, T. H. Watts, all of whom are now dead, and others.

Pursuant to the foregoing call, a preliminary conference in reference to the organization of a State Bar Association

met in the Hall of the House of Representatives on the 15th day of January, 1879.

On motion of D. S. Troy of Montgomery, L. P. Walker of Huntsville, was unanimously elected chairman of the meeting and on motion of J. J. Robinson of Chambers, George W. Taylor of Choctaw was elected Secretary *pro tem.* and the names of thirty members of the bar desirous of organizing a State Bar Association were enrolled by the Secretary.

Messrs. E. W. Pettus, W. M. Brooks and W. L. Bragg, the committee designated and requested in the call to draft a plan of organization to be submitted to the Conference, through W. L. Bragg, reported a Constitution and By-Laws which report of the Committee was received and the Constitution and By-Laws, subject to amendment by the Conference, were adopted.

On motion of Joseph Wheeler of Lawrence, Alexander Troy of Montgomery, was elected Secretary and Treasurer of the Alabama State Bar Association as organized under said Constitution and By-Laws.

On motion the Conference adjourned to meet at the same place on Monday, January 20th.

At the reassembling of the meeting, the Chairman, L. P. Walker, being absent, T. H. Watts of Montgomery, on motion of W. G. Little, Jr., of Sumter, was called to the Chair.

D. S. Troy then introduced the following resolutions which were adopted.

*Resolved:* That this Convention elect a President and five Vice-Presidents of the Bar Association of this State, to serve under the Constitution and By-Laws reported by the Committee as amended by this Convention until the

first annual meeting of said Association, which shall be held on the first Tuesday in December, 1879.

*Resolved*, That the President of said Association, elected by this Convention, shall appoint the Executive Committee and Central Council, provided for in said Constitution and By-Laws, and the persons thus appointed shall discharge the duties of the positions to which they may be appointed, until said first annual meeting and until their successors are elected or appointed, as provided in said Constitution and By-Laws.

*Resolved*, That any member of the Bar of this State, who shall sign or authorize his signature to the roll of membership of said Bar Association and pay to the Secretary and Treasurer the initiation fee within sixty days from this date, shall be a member of this Bar Association, and said Constitution and By-Laws shall become operative at the expiration of said period of sixty days on all who have subscribed the roll of membership and paid the initiation fee.

*Resolved*, That it shall be the duty of the Secretary, without delay, to send by mail a printed copy of said Constitution and By-Laws and of these resolutions to every member of the bar of this State whose address can be ascertained, and also a circular stating briefly the action of this Convention, the names of the officers elected by it, and the names of the Executive Committee and Central Council appointed by the President.

*Resolved*, That the Chairman appoint a committee of three to prepare an act of incorporation of the Association, conferring such powers as may be necessary to accomplish the objects declared in the Constitution, and, if practicable, to secure its enactment by the General Assembly.

The Chair appointed W. L. Bragg, W. G. Little, Jr.

and Gaylord B. Clark as the Committee to prepare the act of incorporation.

On motion the Chair appointed a committee of three consisting of D. S. Troy, John Little Smith and H. A. Woolf, to nominate a President and five Vice-Presidents for the ensuing year, which committee, after deliberation, reported the following as the officers of the Association who were unanimously elected: President W. L. Bragg, Montgomery; Vice-Presidents Peter Hamilton, Mobile, E. W. Pettus, Selma, L. P. Walker, Huntsville, H. M. Somerville, Tuscaloosa, James L. Pugh, Eufaula.

The Act of the General Assembly incorporating the Association, was approved by the Governor, February 12, 1879.

The Central Council appointed by the President was composed of Thomas H. Watts, Sr., Chairman, Daniel S. Troy, Henry C. Semple, Elmore J. Fitzpatrick and James T. Holtzclaw.

The Executive Committee was composed of Daniel S. Troy, Chairman, Henry C. Semple, Elmore J. Fitzpatrick and George F. Moore, and the Secretary, ex-officio.

The first meeting of the Association was held in the Senate Chamber in the City of Montgomery, on the 4th day of December, 1879. At this meeting, in addition to the reports of the Committee on Jurisprudence and Law Reform, by Thomas H. Watts, Sr., and the Committee on Judicial Administration and Remedial Procedure, by Henry D. Clayton, the Committee on Legal Education and Admission to the Bar, by John M. Martin, papers were read by George F. Moore, on "Court Pleading and Practice," and by John Little Smith on "The Roman Bar."

The following officers were elected at this meeting:

President—E. W. Pettus.



Vice-Presidents—John T. Heflin, Wm. G. Jones, H. M. Somerville, Thos. H. Watts, Sr., H. D. Clayton.

The Second Annual meeting of the Association was held in the Supreme Court room at the Capitol in the City of Montgomery, December 2, 1880.

Reports were read from the Committee on Jurisprudence and Law Reform, by Peter Hamilton; on Legal Education and Admission to the Bar, by F. G. Bromberg; papers were read by George F. Moore, on "Judicial Delay," and by M. L. Stansel, on "Champerty as affected by recent legislation and decisions in this country."

The following officers were elected at this meeting to serve for the ensuing year :

President—John Little Smith.

Vice-Presidents—David Clopton, John M. McKleroy, John G. Harris, Milton Humes, Louis Wyeth.

The Third Annual meeting of the Association was held in the United States Court Room at Mobile on December 28th and 30th, 1881.

The report of the Committee on Jurisprudence and Law Reform was read by Hannis Taylor.

On Judicial Administration and Remedial Procedure, by Thos. G. Jones.

On Legal Education and Admission to the Bar, by Emmett O'Neal.

Papers were read at this meeting by John M. McKleroy, on "Equity Jurisdiction and Procedure," and by H. G. McCall, on "The Unpopularity of the Bar."

The officers elected at this meeting were :

President—E. A. O'Neal.

Vice-President—M. L. Stansel, H. D. Clayton. H. T. Toulmin, Thomas H. Watts, Sr., R. H. Abercrombie.

In the report of the Committee on Judicial Administration and Remedial Procedure, by Thos G. Jones, he suggested a Code of Ethics for the guidance of the Bar. It was also in this report that the valuable suggestion was made that a change in the law, so as to provide for the oral examination of witnesses in Chancery causes, should be made.

This report, containing many valuable suggestions, was referred to a Committee of seven, who were directed to prepare such bills as in their discretion might be necessary to carry such suggestions into effect, and report the same to the next annual meeting of the Association, and if adopted to present them to the next General Assembly and urge their passage.

The Fourth Annual Meeting of the Association was held in the Supreme Court Room in the City of Montgomery, on November 20th and 21st, 1882.

The report of the Committee on Jurisprudence and Law Reform was read by the Chairman, Milton Humes.

Of the Committee on Legal Education and Admission to the Bar, by Gregory L. Smith.

Papers were read by William P. Chilton, on "Mobocracy; its remedy; The Maintenance of Law and Judicial Authority."

"Ought the Chancery Court to be Abolished," by David Buell.

"Our Code and Reports," by A. B. McEachin.

"Trial by Jury," by L. A. Shaver.

"The Trial of Clodius," by John Little Smith.

"Should We Have a Bankrupt Law?" by John D. Gardner.

"Family Relations," by Henry St. Paul.

"The Alienation of Homesteads in Alabama," by E. P. Morrissett.

The officers elected at this meeting were:

President—M. L. Stansel.

Vice-Presidents—W. H. Barnes, H. C. Jones, Hannis Taylor, John A. Foster, N. H. R. Dawson.

It was at this meeting that the special Committee of seven reported through Thos. G. Jones, its Chairman, in favor of the appointment of a Committee on the part of the Association, to prepare a Code of Ethics for consideration at the next annual meeting, and also the following suggestion in reference to the examination of witnesses in Chancery causes:

"We recommend that Section 3806 of the Code, requiring testimony in Chancery cases to be taken by interrogatories, be repealed, and that the Supreme Court be authorized and required to adopt such rules and regulations as it may deem necessary from time to time as to the examination of witnesses in Chancery. Your Committee, therefore, herewith report the draft of a bill on that subject"

The Fifth Annual Meeting was held in the hotel at Blount Springs on August 1st and 2d, 1883.

The Annual Address at this meeting was delivered by Hon. George Hoadley, of Cincinnati, O. On "The true Limits of Municipal Law in a Democracy."

The officers elected were:

President—Henry C. Semple.

Vice-Presidents—N. H. K. Dawson, John M. McKleroy, R. O. Pickett, Gaylord B. Clark, John M. Martin.

At this meeting, in addition to the reports of the Committee on Judicial Administration and Remedial Procedure, by Henry Wilson; on Legal Education and Ad-

mission to the Bar, by Lewis M. Stone; on Correspondence, by F. G. Bromberg; papers were read by Hilary A. Herbert, on "The Supreme Court of the United States as a Factor in Federal Politics;" by John A. Foster on "The Sales of Land for Division," and by Stephens Croom, on "The Lien of Judgments."

The Sixth Annual Meeting was held in O'Brien's Opera House in the City of Birmingham, August 6th and 7th, 1884.

Major Semple, the President, being absent, Col. N. H. R. Dawson, First Vice-President, presided over the meeting.

Hon. John A. Campbell, at one time an Associate Justice of the Supreme Court of the United States prepared the Annual Address, but by reason of failing health was unable to be present and deliver it, and it was read to the Association by Governor Watts.

The officers elected at this meeting were :

President—N. H. R. Dawson.

Vice-Presidents—Gaylord B. Clark, George P. Harrison, M. T. Porter, Daniel Coleman; John W. Bush.

The report of the Committee on Correspondence was made by Harry Pillans, on Legal Education and Admission to the Bar by John A. Foster. Papers were read by H. C. Tompkins on "Necessary Reformation in the Administration of Criminal Law;" by R. W. Walker, on "Separate Courts of Chancery;" by Daniel Coleman, on "Reform in the Administration of the Criminal Law;" by Henry D. Clayton, on "Defects and Abuses in the Administration of the Criminal Law;" by D. S. Troy, on "The Moral Responsibility of the Legal Profession for the Administration of Public Justice."

The Seventh Annual Meeting was held in the Supreme

Court room in the City of Montgomery on December 3rd and 4th, 1884.

The officers were elected were :

President—W. H. Barnes.

Vice-Presidents—Peter Hamilton, Dan'l S. Troy, A. B. McEachin, R. T. Simpson, S. W. John.

At this meeting no reports from committees were made except the Executive Committee.

Papers were read by F. S. Ferguson on "Mixed Pickles;" by James Weatherly on "Judicial Delay in Alabama," by Alex. T. London on "The Code of Civil Procedure as Administered in North Carolina," and by W. R. Houghton on "Some Legal Aspects of the Negro Question."

The Eighth Annual Meeting was held in the Supreme Court room at Montgomery, on December 2nd and 3rd, 1885.

The officers elected were :

President—Wm. M. Brooks.

Vice-Presidents—Thos. Seay, C. G. Wagner, J. D. Gardner, H. Austill, Wilbur F. Foster.

The report of the Committee on Judicial Administration and Remedial Procedure was made by Geo. P. Harrison, and on Correspondence by F. G. Bromberg.

Papers were read by W. G. Hutcheson on "An International Court;" by S. W. John on "Local Legislation," and by H. Austill on "The Statutory Estates of Married Women in Alabama."

The Ninth Annual Meeting was held in the Supreme Court room in Montgomery, on December 1st and 2nd, 1886.

The officers elected were :

President—H. C. Tompkins.

Vice-Presidents—Hannis Taylor, S. W. John, Wm. H. Denson, G. W. Hewitt, J. L. Peters.

The report of the Committee on Correspondence was made by F. G. Bromberg.

Papers were read by D. T. Blakey on "The Jurisdiction and Practice of the Probate Court in Alabama;" by Hannis Taylor on "The Inefficiency of Congress as a Legislative Body."

The Tenth Annual Meeting was held in the Hall of the House of Representatives in Montgomery, on December 14th and 15th, 1887.

At this meeting the following officers were elected :

President—Wilbur F. Foster.

Vice-Presidents—G. W. Hewitt, A. C. Hargrove, John B. Knox, F. G. Bromberg, R. Chapman.

F. G. Bromberg, Chairman of the Committee on Correspondence, made the report of that Committee. This was the only report made by any committee except the Executive Committee.

Papers were read by Horace Stringfellow on "Inter-State Commerce Law;" by A. C. Hargrove, who read a very interesting paper to which he gave no title; by Jos. S. Winter on "The un-Constitutionality of the Section of the Code Authorizing the State to sue out Attachments without Affidavit made or Bond Given."

At this meeting Hon. John F. Dillon, of New York delivered the Annual Address on "A Century of American Law."

At this meeting also was adopted the Code of Ethics, which was printed and bound with the proceedings of the meetings.

The Eleventh Annual Meeting was held in the Hall of

the House of Representatives in Montgomery, December 19th and 20th, 1888.

At this meeting the following officers were elected :

President—Milton Humes.

Vice-Presidents—Hannis Taylor, T. B. Roy, Thos. G. Jones, Thomas R. Roulhac, John M. Martin.

Reports were made from the Committee on Jurisprudence and Law Reform by Wm. C. Ward; on Legal Education and Admission to the Bar by R.T. Simpson; on Legislation by J. C. Richardson; on Correspondence by F. G. Bromberg.

Papers were read by Z. M. P. Inge on "Lawyers in Politics;" by Thos. H. Watts, Jr., on "To What Liability do the Exemption Laws Extend."

Hon. John Randolph Tucker, of Virginia, delivered the Annual Address, on "The Common Law as the Germ of Civil Liberty and of Progressive Jurisprudence."

The Twelfth Annual Meeting was held at the Court House at Huntsville, on July 31st and August 1st, 1889.

The officers elected at this meeting were :

President—Thos. H. Watts, Sr.

Vice Presidents—A. B. McEachin, Jno. D. Brandon, E. L. Russell, J. F. Stallings, H. C. Jones.

The Annual Address was delivered by Hon. Geo. W. Stone, on "Judicial Reform."

The report of the Committee on 'Legal Education and Admission to the Bar was read by W. H. Denson.

Papers were read by Amos E. Goodhue, on "The Ideal Lawyer," and by A. T. London, on "Some Suggestions of Reform."

The Thirteenth Annual Meeting was held in the Opera House at Anniston, August 6th and 7th, 1890.

The officers elected at this meeting were :

President—Hannis Taylor.

Vice Presidents—A. B. McEachin, John M. McKleroy, John C. Anderson, D. D. Shelby, Jas. T. Holtzclaw.

Hon. Seymour D. Thompson, of Missouri, delivered the Annual Address.

Judge Thompson gave his Address no title, but discussed ably and at length the importance of the right of local self-government; its principal danger from the Federal Judiciary.

Reports were made by the Central Council; by the Committee on Jurisprudence and Law Reform, by John P. Tillman; on Legislation by A. C. Hargrove; on Legal Education and Admission to the Bar; by John M. McKleroy; on Correspondence by F. G. Bromberg.

Papers were read by A. B. McEachin, on "The Lawyer in Politics;" by D. P. Bestor, on "The Disinclination of Superior Men to Engage in Politics;" by E. L. Russell on "The Supreme Court and Inter-State Commerce;" by Geo. F. Moore on "The Justice of the Peace."

The Fourteenth Annual Meeting was held in the United States Court room at Mobile, July 8th and at Point Clear July 9th, 1891.

At this meeting the following officers were elected:

President—A. B. McEachin.

Vice Presidents—Thos. Seay, D. P. Bestor, E. P. Morrisett, A. E. Goodhue, Geo. W. Peach.

A. C. Hargrove made the report for the Committee on Legislation; D. P. Bestor for the Committee on Legal Education and Admission to the Bar; A. T. London for the Committee on Jurisprudence and Law Reform.

A paper was read by W. R. Nelson on "Business Methods for Lawyers."



The Fifteenth Annual Meeting was held in the city of Montgomery July 6th and at Jackson's Lake July 7, 1892.

It was at this meeting that the custom of having the meeting on both days held in the city of Montgomery, was departed from and the second day's session held at Jackson's Lake, where for the first time a dinner was served by the Association to its members.

The officers elected at this meeting were:

President—A. C. Hargrove.

Vice-Presidents—J. R. Dowdell, Sterling A. Wood, E. L. Russell, C. C. Harris, F. L. Pettus.

Hon. R. C. Brickell delivered the Annual Address, on "The Rise and Growth of the Law in Alabama."

Report of the Committee on Legislation was made by D. S. Troy; on Legal Education and Admission to the Bar, by R. C. Jones; on Correspondence, by F. G. Bromberg.

Papers were read by John A. Foster on "Politics on the Bench;" by S. W. John on "The Impending Crisis—Our Duty."

The Sixteenth Annual Meeting was held in the city of Montgomery on July 5th and at Jackson's Lake July 6th, 1893.

At this meeting the following officers were elected:

President—J. R. Dowdell.

Vice-Presidents—James E. Webb, John D. Roquemore, Thos. R. Roulhac, J. J. Willett, D. P. Bestor.

At this meeting the report of the Committee on Judicial Administration and Remedial Procedure was made by J. J. Willett; on Legal Education and Admission to the Bar, by Daniel Coleman; on Legislative Enactment, by Jas. E. Webb.

Papers were read by J. J. Willett on "The Case Law-

yer;" by S. H. Dent, Jr., on "The Common Law System of Pleading;" by John C. Eyster on "Statutory Changes in Commercial Law;" by Edward deGraffenreid on "The Influence of Rome upon the Common Law of England."

The Annual Address was delivered by Hon. Sterling B. Toney of Louisville, Ky.

The subject of Judge Toney's Address was not given, but it discussed at length many important questions.

The Seventeenth Annual Meeting was held in Montgomery, July 10th and at Jackson's Lake July 11th, 1894.

The report of the Committee on Judicial Administration and Remedial Procedure was read by H. S. D. Mallory; on Legal Education and Admission to the Bar by A. S. Van de Graaff; on Correspondence by F. G. Bromberg.

Papers were read by D. T. Blakey on Electricity in the Law; by John W. Tomlinson on "Why Pleadings should be Verified by Affidavit;" by S. D. Weakley on "Labor and the Law."

At this meeting the following officers were elected:

President—James E. Webb.

Vice-Presidents, David T. Blakey, Harry Pillans, H. S. D. Mallory, George P. Jones, A. S. Van de Graaff.

The Annual Address was prepared by Hon. Thomas J. Semmes of Louisiana, but owing to indisposition he was unable to be present to deliver it. It was read to the Association, at the request of the Secretary, by Thomas H. Clark, now of Washington City.

The subject of the Address was "The Influence of the Civil on the Common Law."

The Eighteenth Annual Meeting was held in the City of Montgomery July 10th, and at Jackson's Lake July 11th, 1895.

The report of the Committee on Jurisprudence and Law Reform was read by A. D. Sayre; on Legal Education and Admission to the Bar by John B. Knox; on Correspondence by F. G. Bromberg; on Legislation by D. S. Troy.

Papers were read by John London on "Exemption from Execution;" by W. L. Chambers on "International Relations."

The officers elected at this meeting were:

President—Daniel S. Troy.

Vice-Presidents—R. C. Jones, G. Y. Overall, W. L. Clay, S. H. Dent, Jr., S. D. Weakley.

Hon. S. M. Meek, of Mississippi, delivered the Annual Address on "The Power and Influence of the Bar."

The Nineteenth Annual Meeting was held in the City of Birmingham, August 5th and 6th, 1896.

Col. D. S. Troy, the President, having died on September 25th, 1895, the address of the President was delivered by Gen. Richard C. Jones, First Vice-President, who presided over the deliberations of the Association during this meeting.

The only report at this meeting was made by the Committee on Legislation by James E. Webb.

Papers were read by C. A. Mountjoy, on "The Supreme Court;" by John V. Smith on "The Age of Consent in Alabama;" by H. C. Tompkins on "Judah Phillips Benjamin."

The officers elected were :

President—Richard H. Clarke.

Vice Presidents—Geo. P. Jones, Geo. W. Peach, Wm. A. Walker, Jr., W. L. Martin, J. T. Heflin.

The Annual Address was delivered by Hon. Alex. C.

King, of Atlanta, Ga., on "The Growth of the Constitution."

The Twentieth Annual Meeting was held in the City of Montgomery in the Senate Chamber at the Capitol June 30th and at Jackson's Lake July 1st, 1897.

Reports were read from the Committee on Correspondence by F. G. Bromberg; on Legislation by James E. Webb; on Legislative Enactment by H. C. Tompkins.

A paper was read by R. L. Harmon on "The Lawyer and the Shyster."

The officers elected were:

President, John P. Tillman.

Vice-Presidents, George P. Harrison, Thomas R. Roulhac, W. H. Tayloe, E. A. Graham, A. A. Evans.

The Twenty-First Annual meeting was held in the Senate Chamber in the City of Montgomery on June 17th and at Jackson's Lake on June 18th, 1898.

The officers elected at this meeting were:

President, John D. Roquemore.

Vice-Presidents. J. J. Willett, Harry Pillans, E. K. Campbell, J. A. W. Smith, Sterling A. Wood.

Reports were read from the Committee on Jurisprudence and Law Reform by Thomas G. Jones; on Judicial Administration and Remedial Procedure by S. D. Weakley; on Legal Education and Admission to the Bar by Richard C. Jones; on Correspondence by F. G. Bromberg; on Legislation by W. L. Martin.

Papers were read by J. M. Davison on "Our Judiciary and Politics," and by Phil. H. Stern on Criminal Law and the Law of Criminals."

The Twenty-Second Annual Meeting was held in the Senate Chamber in the City of Montgomery, June 16th and at Jackson's Lake June 17th, 1899.

The officers elected were :

President—J. J. Willett.

Vice-Presidents—S. D. Weakley, E. B. Almon, Ed. deGraffenreid, F. G. Bromberg, J. B. Duke.

Hon. H. M. Somerville, of New York, delivered the Annual Address.

The subject of Judge Somerville's Address was "The Trial of the Alabama Supreme Court Judges in 1829—The Last of a Series of Political Assaults on the Independence of the Judiciary in the early century."

Reports of the Committees on Legal Education and Admission to the Bar were made by W. S. Thorington; on Correspondence by F. G. Bromberg; on Local Bar Association by R. L. Harmon, on Legislative Enactment by A. D. Sayre; on Judicial Administration and Remedial Procedure by J. J. Mayfield.

Papers were read by W. M. Blakey on "The Practical Working of the Bankrupt Law;" by John C. Anderson on "Exemption Laws in Alabama."

The Twenty-Third Annual meeting was held in the Senate Chamber in the City of Montgomery on June 15th and at Jackson's Lake June 16th, 1900.

The officers elected were :

President—Thomas G. Jones.

Vice-Presidents—John W. Tomlinson, Lawrence Cooper, J. J. Mayfield, D. P. Bestor, W. L. Parks.

The Annual Address was delivered by Hon. Wm. J. Curtis, of New York, on "James Kent, Father of American Jurisprudence."

Reports were read from the Committee on Jurisprudence and Law Reform by S. D. Weakley; on Judicial Administration and Remedial Procedure by A. A. Wiley;

on Legislation by W. C. Oates; on Correspondence by F. G. Bromberg, on Local Bar Association by F. S. Ball.

Papers were read by W. H. Thomas on the "Birth and Growth of the Constitution of Alabama;" by Virgil Bouldin on "Some Suggestions on the Revision of our State Constitution;" by Arthur B. Foster on "The Limit of Legislative Control over Private Property, effected for the public interest;" by Thos. R. Roulhac on "The Possession and Government of Colonies will be fatal to the Republic."

The Twenty-Fourth Annual Meeting was held in the Senate Chamber in the City of Montgomery, June 28th, and at Jackson's Lake June 29th, 1901.

The officers elected at this meeting were:

President—E. L. Russell.

Vice Presidents—James Weatherly, Ed. deGraffenreid, A. H. Alston, J. T. Kirk, P. A. McDaniel.

The Annual Address was delivered by Hon. Hilary A. Herbert, of Washington, D. C., on "The Duties and Responsibilities of the American Lawyer in the Twentieth Century."

The report of the Committee on Jurisprudence and Law Reform was made by W. A. Gunter; on Judicial Administration and Remedial Procedure by N. D. Denson; on Correspondence by F. G. Bromberg; on Legal Education and Admission to the Bar by Jas. Weatherly.

Papers were read by F. G. Caffey on "The Annexation of West Florida to Alabama" and by Lawrence Cooper on "The Makers of the Laws;" by Thomas M. Owen on "Ephraim Kirby, First Superior Court Judge in what is now Alabama."

The Twenty-Fifth Annual Meeting was held in the U. S. Court room at Huntsville, July 4th and at Monte Sano July 5th, 1902.

The officers elected at this meeting were :

President—Lawrence Cooper.

Vice-Presidents—Ed. deGraffenreid, Sterling A. Wood, W. L. Martin, L. E. Jeffries, C. C. Harris.

Hon. J. R. Lamar, of Augusta, Ga., delivered the Annual Address. The subject of the Annual Address was "The Work and Position of the American Courts."

The report of the Committee on Jurisprudence and Law Reform was read by D. P. Bestor; on Correspondence by F. G. Bromberg; on Legal Education and Admission to the Bar by C. W. Ferguson; on Judicial Administration and Remedial Procedure by Ed. deGraffenreid; on Local Bar Association by H. E. Gipson; on Publication by W. L. Clay.

Papers were read by W. T. Sanders on "Legislation Touching Local Matters under the New Constitution;" by S. W. John on "Two Lawyers—Two Chief Justices;" by Daniel Coleman on "Jury Reform."

The Twenty-Sixth Annual Meeting was held in the Hall of the House of Representatives June 19th, and at Jackson's Lake, June 20th, 1903.

At this meeting the following officers were elected :

President—Ed. deGraffenreid.

Vice-Presidents—John B. Knox, Horace Stringfellow, Wm. B. Bankhead, J. Manly Foster, J. W. Gray.

The Annual Address was delivered by Hon. Edward M. Shepard, of New York, on "The Promise of the Isthmian Canal."

The report of the Committee on Legal Education and Admission to the Bar was read by W. S. Thorington; on

Correspondence by F. G. Bromberg. The report of the Central Council was read by W. C. Oates.

Papers were read by Ea. deGraffenreid on "The Effect of Slavery upon the Constitution and Laws of the United States and of the State of Alabama;" by Paul Speake on "Wantonness in Personal Injury Cases;" by W. L. Martin on "The British Constitution."



# GROWTH AND DEVELOPMENT OF THE SCOPE AND POWER OF TRUST COMPANIES.

BY

**F. M. PURIFOY.**

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*To the President and Members of the Alabama State Bar Association:*

This subject may seem more suited for the consideration of bankers than of lawyers, but I shall consider the evolution of the legal doctrine, upon which the trust company is founded. While I am sure that this part of the subject is one of interest to the lawyer, I trust that any further consideration of the subject will not be without interest to those who from the very nature of their professional business have so much to do with the affairs of financial institutions.

The organization of the trust company followed the rejection of the old doctrine that a corporation could not act in a fiduciary capacity. Blackstone states as the old doctrines, that an aggregate corporation could not be an executor or administrator, or perform any personal duties, for it could not take an oath for the due execution of the office; nor could it be seized of lands to the use of another, for such kind of confidence was foreign to the end of the institution.

The first case in this country on the subject of uses of

which corporations might be seized was that of *Trustees vs. King, Executor*, 12 Mass., 546, decided in 1816 by Judge Thatcher. He says: "there is nothing in the nature of corporation, as described by Kyd, (who seems to have made up his definition from a careful examination of all the various kinds of such bodies known in the English law), that would exclude them from taking property to the use of others besides themselves." This decision is made on authority of *Holland vs. Bonis*, 3 Leonard English King's Bench Reports, 175. Though the doctrine was not affirmatively expressed in the English case, it seems that an objection was raised that a corporation could not be seized to an use; and, as the objection was overruled, the court, in effect, determined that a corporation might be seized to an use.

The Legislature of New York chartered the Farmers' Fire Insurance and Loan Company in 1822, and authorized it to take by deed or devise any real or personal property in trust, and to execute the trust. In amending the charter since then, the name, as it now stands, was changed to Farmers' Loan and Trust Company. Three or four years later, Chancellor Kent, in his Commentaries discussing the authority of corporations to be trustees, or to be seized to an use, says: "The only reasonable limitation is, that a corporation cannot be seized of land in trust, for purposes foreign to its institution." In 1828, Chancellor Walworth, in *re Howe*, Extr. N. Y., says: "Corporations cannot act as trustees in relation to any matters in which the corporation has no interest." In 1830, a second corporation, the New York Life Insurance and Trust Company was authorized to act as trustee. The first trust company organized in this country to transact exclusively the business of a trust company is the United States Trust

Company, of New York. It was organized in 1858, and its charter is the basis of all special charters of a similar nature afterwards granted in New York, as well as of the general law for the incorporation of trust companies, which was adopted in 1887.

In 1886, the Pennsylvania Company for Insurance on Lives and Granting Annuities, was "authorized and empowered to accept and receive moneys or other property real or personal, in trust, to accumulate the interest or income thereof." and "also, to accept and execute trusts of every description, which may be committed or transferred with their consent to them by any person or persons whatever, bodies corporate or politic, or by any Court of the United States, or of the Commonwealth of Pennsylvania." Although the date of organization of this company is usually set down as 1809, it was not a trust company before 1836. The Girard Trust Company, of Philadelphia, was organized and chartered in 1836, and the Barclay Trust Company, of Greensburg, Penn., in 1854.

In the case of *Vidal vs. Girard's Executors*; 2 How. (U S.) 127, in 1844, Judge Story says: "It is now held, that where the corporation has a legal capacity to take real or personal estate, there it may take it and hold it upon trust, in the same manner and to the same extent as a private person may do. Neither is there any positive objection in point of law to a corporation taking property upon a trust not strictly within the scope of the direct purposes of its institution, but collateral to them". This decision settled the modern doctrine as to Federal Courts, and is the leading case in most of the States.

In Illinois, the Merchants' Loan and Trust Company, of Chicago, was organized in 1857, and the State Savings Loan and Trust Company, of Quincy, in 1861.

So far as I am informed, these eight trust companies in the States named comprise the extent of the trust companies before the war of 1861-'65. From 1864 to 1876, approximately, fifty companies were organized, some in each year, but none were organized in 1877 and 1878. From 1879, with the exception of 1888, the organization of trust companies in this country steadily grew until a high mark was reached in 1889. The number from that time to 1896 decreased each year. From 1897 to the present time, the number has increased each year. During 1903, the number opening business was unprecedented, though a large number was organized in 1902.

As our population became dense, wealth accumulated, and financial affairs more complex; the unequivocal rejection of the old doctrines by the Legislatures and Courts offered relief to the commercial banks, for, from their very nature, they could not respond to demands for either large or long time loans. The trust company meets these demands and acts in almost any fiduciary capacity. It utilizes the money of those not in commercial business and needing no regular line of discounts, and who desire a small interest on their deposits. Being under no obligations, as are commercial banks, to lend to its depositors, and some deposits being in trust, it selects the best class of loans on collateral or real estate.

In rendering an opinion in a Minnesota case in 1889, Judge Mitchell, with regard to trust companies, says: "In many of the States, particularly the older ones, this is fast becoming the favorite method of administering and executing trusts. The facts that such corporations have perpetuity of existence; that they are less liable than natural persons to sudden fluctuations of fortune; that being organized for that special purpose they can administer estates

more efficiently and economically; and that, in case of larger estates, it is often difficult to find a natural person who is both willing and able to accept the trust, and give the necessary bonds,—have suggested the necessity and created the demand for such organizations.” Judge Mitchell might have added that trust companies have no exemptions, keep systematic records of what they do, and have the learning, experience and discretion of a number of the most successful men in a community, not only as directors, but as executive officers, many of whom are selected for their knowledge of law. It is well recognized that one of the most valuable assets of a trust company consists in preserving a high standard of conservatism and business integrity, and a well managed trust company does not sacrifice the holdings of an estate or other trust, but acts only after the most careful investigation and deliberation. The trust company is an institution of the people, but it should be understood that I do not refer to combinations of capital, commonly known as “trusts,” “whose purpose in combining is to control the production and manufacture of any particular article on the market, and by such control dictate the price at which such article shall be sold, the effect being to drive out of business all of the small dealers in the commodity, and to render the public subject to the decision of the combination as to what price shall be paid for the article.” It is unfortunate that the word “trust” is commonly applied to such combinations, but it comes from the fact that legal trusts are created to carry out their purposes and plans. However, these purposes and plans are entirely foreign to the purposes of the general trust companies which form so large part of our financial system.

Trust companies, generally, are classed with banks, and

from figures collected by the Comptroller of the Currency, June 30, 1903, it is estimated that they command nearly three billion dollars of assets, or nine per cent. of the banking power of the world, and more than twenty per cent. of that of the United States. They have over one-half of the power of National Banks, although less than one-fifth in number, and represent about one-third of the banking power of over thirteen thousand State and other banks and trust companies, although making less than one-thirteenth of the number. They constitute a large separate element of our financial system, and, in the National Bankers' Association and in one of the State Bankers' Associations, they have formed divisions of their own. It is an American institution and similar organizations do not exist in other countries, though some are of the opinion that the first act of the Legislature of Pennsylvania conferring trust powers on a corporation was adopted from the articles of association or incorporation of the agency houses of India.

As to trust companies in Alabama, in addressing the Alabama Bankers' Association last year, Mr. Chappell Cory, Secretary of the Birmingham Trust and Savings' Company, says: "So far, in Alabama, we have no trust company doing only a trust business, nor one in which the execution of trusts is the leading department of its business, still, we have progressed far enough to have the basis of experience as a guide for the future, to indicate the wonderful possibilities that may be ahead, and to encourage systematic and energetic work in developing a fertile field. The smallness of our cities and the narrow range of our industrial activities have heretofore afforded small scope for the introduction of a scheme of business that is yet considered young where it is oldest. The

growth of the trust company in the East and the larger cities of the West, is one of the marvels, and, practically, all of it has been accomplished within a quarter of a century."

The Alabama Business Corporation Act, approved October 2, 1908, provides that "corporations formed for the purpose of carrying on the business of banking \* \* \* may take and receive security by mortgage or otherwise on property, real or personal, \* \* \* and may become trustees for any purpose, be appointed and act as executors, administrators, guardians and receivers and do any business and exercise any powers incident to the business of trust companies doing a banking business," and every bank chartered under the act or any other general or special law of the State, may alter or amend its charter so as to exercise these powers. As the "smallness of our cities and the narrow range of our industrial activities" has prevented the organization of trust companies transacting only the business of a trust company, this act affords the means for every bank chartered by the State to transact a line of business, the lack of which has heretofore retarded industry and progress, and every State bank will do well to embrace the opportunity for making a fair profit, and at the same time assisting to develop our natural resources.

REPORT OF  
Committee on Local Bar Associations

BY

PHARES COLEMAN, CHAIRMAN.

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*Mr. President and Gentlemen of the Alabama State Bar Association:*

The By-Laws of this Association made it the duty of this Committee to encourage the organization and maintenance of Local Bar Associations throughout the State, and their affiliation with this Association.

While it has not been practicable during the past year for your Committee to bring about the establishment of any Local Bar Associations, the purpose intended to be accomplished by such Associations as expressed in the duties prescribed for this Committee are such as should meet with the commendation and encouragement of the lawyers throughout the State. There seems, however, to be a decided disinclination on the part of the lawyers of the State to organize themselves into local associations. That this is true is manifested by the fact that, so far as the writer is informed, there is not a single town or city in the State except Mobile where there is a live, active organization of lawyers. There is no town or city where there are regular meetings of lawyers, where questions pertaining to their profession can be discussed and means can be devised for advancement. This should not be the case, and our brethren



owe it to themselves and to the profession to see that such a condition no longer exists.

It is a lamentable fact that the members of our profession do not manifest the proper interest in the State Bar Association, which has for its avowed object the advancement of the science of jurisprudence, the promotion of the administration of justice throughout the State, the upbuilding of the honor of the profession of the law, and the establishment of cordial intercourse among the members of the bar of Alabama. "That out of the multiplicity of counsel there is wisdom," is an aphorism with which we are all familiar, and it was intended that this proverb should be exemplified by the establishment of the Alabama State Bar Association. The meeting together of lawyers, the discussion of different legal subjects, the free interchange of views and ideas upon questions pertaining to our profession and a concentrated effort to uphold the profession, will, inevitably, tend to advance the science of our jurisprudence and promote the administration of justice throughout the State. But this cannot be hoped for, unless there is established a cordial intercourse among the members of the bar of the State, in their capacity as lawyers. Certain it is that this altruistic end cannot be attained simply by the gathering once a year of a faithful few, at the annual meeting of our State Bar Association.

The cordial professional relations must be commenced and maintained by the members of the local bars, and this cannot be effectively done except by establishing local organizations, in which each lawyer of the place will feel and manifest a personal interest. After all, the maintenance of the high standard of our profession and its advancement is dependent upon the personal interest and effort of the individual member.

In truth, our State Bar Association should be a composite whole made up of representatives from the different local Bar Associations of the State. It should be, if you please, a congress or parliament of the legal profession of our State, the members and participants in which are sent as representatives from the different local associations. In this way, each person attending would be charged with a specific duty to perform; among the lawyers of each town or city there would be felt a desire for representation; and in the election of representatives there would be imposed a responsibility, which, of itself, would create an interest, that would lead to thought and serious consideration for the betterment and uplifting of the profession. Of course this idea carries with it the necessity for the establishment in each city and town where there are lawyers, a local bar association. This local bar association, when properly organized and maintained, creates an interest on the part of its members in the growth and development of the profession and in upholding the honor and integrity thereof. This interest, when properly fostered and encouraged, will naturally lead to a desire and a determination for representation in the State Association.

It is gratifying to your Committee, as well as to all other members of the Association, to note that the year just closing has been an unusually prosperous one for the Association and that there seems to be a brighter outlook for growth and development than there has been for many years past. Much good has been accomplished, but much more good can be accomplished. Let each member realize that in order for us to attain what is to be desired, it is necessary for us to be zealous in our efforts, to create anew an earnest interest in our work, and to see to it that this interest leads to personal enthusiasm and endeavor for the

upbuilding of our profession. New methods must be employed, new ideas inculcated. The old ways have not led to the success hoped for, and new paths must now be trodden.

If some effective and practical method can be inaugurated whereby a leading attorney in each town and city in Alabama will be charged with the personal duty of establishing and maintaining a local bar association, it is believed that a long step in the right direction will have been taken. This much having been accomplished, the next step to be taken is to provide that the State Association shall be composed of representatives from each local association, the representation to be apportioned in some proper manner; and these representatives shall constitute the legislative and governing body of the State and local associations. A lawyer selected by the brethren of his local organization to represent them in the State Association could not fail to appreciate the compliment bestowed, which would lead him to attend the Annual Meetings; and he would come to such meetings charged with a duty and realizing the responsibility imposed. The result would be the engendering of a personal interest in the individual lawyer, the creation of thoughtful consideration of questions pertaining to our jurisprudence and the administration of our laws, and the growth and advancement of our profession.

This plan does not carry with it an intention of preventing all lawyers in the State, eligible for membership; from becoming members of the State Bar Association, with the right to discuss all questions considered by the Association; but the idea is that the legislation of the State Bar Association should be enacted by the representatives of the local bar associations, upon whom their associates will have im-

posed the duty and who have accepted the responsibility incident thereto. In other words: Upon all questions presented to the State Bar Association for action, the voting shall be done by the representatives of the local bar associations, while all the members of the State Bar Association can take part in the discussion of the questions presented; giving their representatives the assistance of their views, the result of their experience and the benefit of their wisdom; and in this way, each member, whether a representative or not, will contribute to the upbuilding of our Association and the proper development of our profession.

These suggestions are the offspring of a deep interest in the Association and a love for the profession; and are submitted, with the belief that by their adoption, the lofty purpose of the Alabama State Bar Association will be more nearly conserved than it has been in the past.

NECROLOGY OF THE  
ALABAMA STATE BAR ASSOCIATION,  
1903-1904.

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BY THOMAS M. OWEN.

Only three of our members have been taken from us by death during the past year. These are in the order of their decease: Walter Isbell Bullock, of Russellville; John Gindrat Winter and Edward Alfred Graham, both of Montgomery. In the passing of these men the Association has not only lost three valued members, but the profession and the State of Alabama as well have sustained a very great loss.

WALTER ISBELL BULLOCK.

Comparatively a young man and apparently with many years before him, Mr. Bullock was called to his reward January 11, 1904. His home was at Russellville, Franklin county, near which place he was born October 6, 1859. His father was Francis Bullock of the same county, but whose ancestors came from Granville county, N. C. His mother was Celia Catherine, daughter of William and Harriet Tompkins, of the present Colbert county. Francis Bullock was a Confederate soldier, and fell at Perryville, Ky. Mr. Bullock was educated in the common schools; in 1880 was admitted to the bar at Russellville; in 1884 was elected a member of the General Assembly; in 1900 was elected State Senator from the Thirty-First

District; was an unsuccessful candidate for representative of the seventh district in Congress at the general election of 1896; had been a member of the Democratic State Executive Committee for many years, and was at his death a trustee of the State Normal School, Florence. For almost a quarter of a century Mr. Bullock successfully practiced his profession, and was one of the leading lawyers in his section of the State. He was a Democrat, and a member of the Baptist Church. He was twice married: (1) on December 28, 1887 to Leila, daughter of Judge Sydney S. Anderson and wife Dora Cleere, of Russellville; and (2) on October 28, 1901 to Jean, daughter of George S. Henderson, of Tuscumbia.

#### JOHN GINDRAT WINTER.

The second of our group of deceased associates to respond to the dread summons was Judge John Gindrat Winter. On Monday night, February 22, 1904, about 9 o'clock, with dramatic suddenness and without a moment's warning he was hurried from life to death. He met the end bravely and without a murmur, as becomes a soul of heroic mould. Judge Winter was a native of Montgomery. He was born March 21, 1846, and was the son of Joseph Samuel and Mary Elizabeth (*Gindrat*) Winter, the grandson of John Gano and Lucy (*Bennett*) Winter, and of John Gindrat, and the great-grandson of Joseph Winter, of an old knickerbocker family of New York, and who was aid-de-camp to Gen. Washington on the evacuation of that city. The Winter and Gindrat families were among the very first settlers of the city of Montgomery, and in every generation, for more than seventy-five years, they have furnished the State with influential and representative leaders. John Gano Winter came to Montgomery from Augusta, Ga. He was a "captain of industry," and

a leader in commercial enterprises. He was an ardent advocate of the plank road movement; and he had one of the earliest iron-works of any extent in Montgomery. John Gindrat was of Huguenot origin, and at his home on Commerce street in 1825, Gen. Lafayette spent his last hours before leaving the city for Mobile. Joseph S. Winter was a patriotic and progressive resident of Montgomery, and his memory is yet green with older citizens.

In his day and generation John G. Winter met nobly the burdens and demands of life, and was thus worthy of the splendid heritage of noble matrons and honest sires. His early education was received in private schools of his native city. At the age of sixteen in 1862, he matriculated at the University of Alabama. One year later he joined a company of cadets, Capt. Charles P. Storrs, which enlisted in the 7th Alabama regiment of cavalry. Entering the service as a private, by sheer force of merit he was promoted through the successive grades of sergeant, lieutenant, and acting adjutant of his regiment. He was with his command in all its engagements, and was a capable, brave and fearless soldier and officer.

After the war he took a course in the law department of Columbia College, and in 1868 located in his home town for the life of a lawyer. Surrounded by a sympathetic body of friends, and thoroughly equipped, his professional advancement was steady. He held the office of Solicitor of Montgomery county for a short period about 1870-71, but did not again aspire to public office until his appointment in 1896 by Gov. Wm. C. Oates, as Judge of the City Court of Montgomery to succeed Judge Thomas M. Arrington. While an ardent Democrat, and for sometime chairman of the Executive Committee of Montgomery county in a trying period of her history, and while he

could doubtless have had promotion in an official way, he adhered to a resolute purpose, early fixed, to be a practicing lawyer and that alone. In 1897 he returned to the practice. On the formation of the 15th judicial circuit in 1903 he was named as its presiding Judge by Gov. Wm. D. Jelks, and had he lived he would, at the first election, have been chosen as his own successor. It was his desire to close his career on the bench, and this wish was realized, though much before he or his friends anticipated.

The lessons of the life of Judge Winter of most value to this Association are such as pertained to his profession, although his life had many lessons of usefulness and value. He was courageous and fearless, he was patriotic, he was humane, he was charitable, he "loved his fellow men." As a lawyer, he was painstaking and thorough, and his successes in important litigation indicate how thoroughly he had mastered the law. As a Judge he met the public demands, and he dispensed justice uprightly.

In 1867, January 29, Judge Winter was married, at Tuskegee, Ala., to Sarah Verdier, daughter of James Lawrence and Jane (*Verdier*) Calhoun, who at one time were residents of Newnan, Ga. James L. was the son of William Calhoun, a brother of the great statesman, John C. Calhoun. The parents of John C. and William Calhoun were Patrick and Martha (*Caldwell*) Calhoun, Patrick being the son of James Calhoun, an early Scotch-Irish emigrant to America. The parents of Jane (*Verdier*) Calhoun were Dr. James Robert and Sarah (*Fickel*) Verdier, of Beaufort, S. C. Mrs. Winter is a woman of culture, refinement and aspiration. Their children are: (1) Nina, wife of James Steptoe Pinckard, Esq., an attorney of Montgomery; and (2) Elizabeth Eugenia.



## EDWARD ALFRED GRAHAM.

The last whom we are called to sketch is Edward Alfred Graham. He was born Oct. 18, 1852, near Wetumpka, then in Coosa county, Ala. He was the son of Malcolm Daniel and Amelia (*Ready*) Graham, and the grandson of John G. and Jeannette (*Smith*) Graham, and of Aaron and Jerusha (*Sims*) Ready. The Graham family came to America after the battle of Culloden, one branch from Inverary, Scotland, and the other from Ulster, Ireland, and located in North Carolina. Its representatives are found in Alabama, contemporary with the date of its admission into the Union. The Smiths are also of Scotch origin, and with the Readys were early seated in the State. John G. Graham resided in Autauga county, and Aaron Ready at Wetumpka. Malcolm D. Graham was born in 1826 educated at Transylvania University, admitted to the bar, clerk of the Alabama House of Representatives, 1853, removed to Henderson, Tex., where he was State Senator, 1857, and Attorney-General, 1858. He entered the Confederate service with the rank of Colonel, but in 1862 was elected to the Confederate Congress. Returning to Alabama in 1866, he practiced law in Montgomery until his death in 1878. It is said of him that he was a "superior type of manhood, physically, intellectually, and morally, and unites to talents of a high order, many excellencies of character".

The subject of this sketch, his son, E. A. Graham, received a thorough elementary education, and was prepared for college by Dr. Henry Tutwiler, at his famous Greene Springs School. He entered Washington and Lee University in 1870, but two years later he left without graduation. Determining upon a career as a lawyer, he prepared

himself under his father, and came to the bar in the city of Montgomery in 1874. Although many times in public office he continuously maintained his professional relations, and at his death was properly ranked as one of the first lawyers of the Alabama bar. He met all of the varying demands of the most exacting of professions. He was successful as an advocate, sound as a counsellor, and wise in leadership.

In 1877 Gov. George S. Houston appointed him Clerk of the Circuit Court of Montgomery county. From this time forward he was often in public life. He was a member of the House of Representatives, 1882-83, and the State Senate, 1886-87 and 1888-89. In 1901 he was chosen as one of the four delegates from Montgomery county to the Constitutional Convention of that year. His service in that body was noted for conservatism and wisdom.

For many years he was a leader in the municipal life of Montgomery. He was twice City Recorder, was elected Mayor in 1889 and declined a reomination, and was eight years City Attorney, voluntarily retiring in 1901. Among notable municipal improvements which had their inception in his administration, may be mentioned the paving of the city. During the term of his successor the work was actually begun, and Mr. Graham laid on Commerce street the first Belgian block put down in Montgomery.

Mr. Graham was a Democrat in politics, and always responded with promptness to the call of his party. He was for some time secretary of the State Democratic Executive Committee. Like his ancestors for generations, he was a Presbyterian. Uniting with the First Presbyterian Church of Montgomery in 1869, he maintained a consistent membership for thirty-five years. In 1899 he

was installed as a Deacon, in which sacred office he continued to his death. He was prominent in many of the fraternal organizations of the city, being a leading and useful member of the Odd Fellows, Red Men, Knights of Honor, the Elks and Knights of Pythias. He joined the latter in 1876, and had held the high posts of Grand Chancellor, Supreme Representative, and member of the Supreme Tribunal, 1894-1903. In early life he was connected with the Montgomery Greys, and was at one time the Captain of the company. At the time of his death he was the senior member of the law firm of Graham and Steiner.

Mr. Graham was married Dec. 28, 1876, at Eufaula, Ala., to Sallie Clayton, daughter of Dr. Wm. Horatio and Mary Butler (*Shorter*) Thornton. Dr. Thornton was the great grandson of Matthew Thornton of New Hampshire, one of the signers of the Declaration of Independence. His wife, Mary B. Shorter, was a sister of Gov. John Gill Shorter, and of Messrs. Eli, Renben, and Henry R. Shorter, all marked men in Alabama history. The wife and five children of Mr. Graham survive him. The latter are: (1) Amelia, wife of John Mays Stokely, Newport, Tenn.; (2) Anna, wife of Rev. Eugene Lott Hill, Eufaula; (3) Mary; (4) Edward Thornton; and (5) Dorothy.

Mr. Graham died July 1, 1904, at his home in Montgomery, and is buried in Oakwood Cemetery.

## AN ACT

To amend Sections 598, 599, 600, 601, 603, 605, 606 and 610 of the Code of Alabama. Be it enacted by the Legislature of Alabama:

SECTION 1. That Section 598 of the Code of Alabama be, and the same is hereby, amended so as to read as follows: The Alabama State Bar Association, or the Central Council thereof, has authority to institute and prosecute, or cause to be instituted and prosecuted, in the name of the State of Alabama, the proceedings herein prescribed for the suspension or removal of an attorney.

SEC. 2. That Section 599 of said Code be, and the same is hereby, amended so as to read as follows: The accusation must be in writing, and when the prosecution is instituted by the Alabama State Bar Association, or the Central Council thereof, a written statement signed by the President of said Association, or the Chairman of said Council, and attested by the Secretary of said Association, accompanied by written affidavit of any person or persons making charges for suspension or removal of such attorney, if any, taken before any officer authorized by law to administer oaths within or out of the State, setting forth the facts upon which the same may be based, shall be delivered by the Secretary of said Association to the Solicitor of the Circuit in which such attorney resides and thereupon, or when the proceeding is taken by the Court of its own motion, the Solicitor of said Circuit shall draw up such accusation, citing the accused to appear before said Circuit Court, or City Court, or court of like jurisdic-

tion, on a day named therein, and moving the court for the suspension or removal of such attorney, and have the same served by the sheriff of the county of such attorney's residence, by leaving a copy thereof with the accused.

SEC. 3. That Section 600 of said Code be, and the same is hereby, amended so as to read as follows: If the proceedings are upon the information of an individual, the accusation must be in writing, setting forth the facts upon which the charges are based, verified by the oath of such individual, or some other person, taken before any officer authorized by law to administer oaths in or out of the State, that such facts are true, and must be presented to and filed in said Circuit Court, or City Court, or court of like jurisdiction, accompanied by security for costs to be approved by the Judge thereof.

SEC. 4. That Section 601 of said Code be, and the same is hereby, amended so as to read as follows: When the accusation is made by an individual the Circuit Court, or City Court, or court of like jurisdiction, must if of opinion that the accusation would, if true, furnish grounds of suspension or removal of such attorney, make an order requiring the accused to appear and answer the same at a specified day during that, or the next term, or at any other time, when the court can hear and determine the same, a copy of which, together with a copy of the accusation, must be served upon the accused; provided, that if such order is made, or proceedings are instituted by the court of its own motion, or as provided by Section 2 of this Act ten days before any term of the court, or before the adjournment thereof, such accusation must be made returnable and be heard during said term, unless continued for good cause by the court, upon such terms as it may impose.

SEC. 5. That Section 603 of said Code be, and the same is hereby, amended so as to read as follows: The accused may answer such accusation, either by objecting in writing to the sufficiency thereof, or by denying the truth of the facts alleged or setting forth the facts of his defense, which said answer as to facts, by denial or otherwise, must be in writing, signed by the accused and verified by his oath, and the accusation, objections and answer in said proceedings are hereby made of record therein as in other civil suits or proceedings in said court.

SEC. 6. That Section 605 of said Code be, and the same is hereby, amended so as to read as follows: If the accused pleads guilty, or fails or refuses to answer the accusation, the court must proceed to judgment of suspension or removal; if he answer the accusation, the court must immediately, or at such time as it may appoint, proceed to try the same, either side having the right to demand a trial by jury; if no jury is demanded, the court in trying the same shall make and file a statement of the facts established by the evidence, and if a jury is demanded, the jury must make a special finding of the facts, upon issues of facts submitted by the court, and upon such statement of facts by the court, or special finding of facts by the jury, the court must render judgment of acquittal or suspension, or removal, of the accused, as such facts may warrant; provided, however that such accused attorney may stop or prevent such prosecution by a surrender of his license as an attorney in all the courts of the State of Alabama, a record of which surrender shall be made in the Supreme Court of said State.

SEC. 7. That Section 606 of said Code be, and the same is hereby, amended so as to read as follows: The proceedings when instituted by the court of its own

motion, or when the written statement hereinbefore provided for has been presented by the Alabama State Bar Association, or its Central Council, to the Solicitor of the Circuit, in which the accused resides, must be conducted in the name of the State, and when on the information of an individual in the name of the State upon the information of such person; and in all cases the Solicitor of said Circuit shall appear and sustain such accusation, and be responsible for the faithful performance thereof as of other official duties required of him by law; provided, however, that the Court may, upon the motion of said Solicitor, and upon good cause shown, at any time require said The Alabama State Bar Association to give security for the costs of such proceedings to be approved by the Court within ten days from notice to the Secretary of said Association, by said Solicitor, and the hearing of said cause shall be postponed for that time, unless such security shall be sooner given.

SEC. 8. That Section 610 of said Code be, and the same is hereby, amended so that the same shall read as follows: Either party may appeal to the Supreme Court from any adverse judgment rendered by said Circuit Court, City Court, or court of like jurisdiction, in said proceeding at any time within thirty days after such judgment, in the manner now prescribed by law for appeals in civil cases, and may reserve by bill of exceptions any question proper to be reserved in civil causes and the judgment rendered in said proceeding, and the Supreme Court may affirm, modify or reverse such judgment, or render such judgment in such proceeding as the Circuit Court, City Court, or court of like jurisdiction, should have rendered.

SEC. 9. Whenever any disagreement or controversy arises between an attorney at law and any other person,

respecting the amount of the compensation to which he is entitled by contract or otherwise, and his retention of the same out of any funds in his hands, such attorney may by motion in the Circuit Court, City Court, or court of like jurisdiction, of the county of his residence of which such other person shall have notice, obtain an order of said court that a certain amount is due him under such contract, or would be reasonable compensation for his services, and when such motion is made and order obtained, such attorney shall not be subject to prosecution, suspension or removal under this act, or other penalty therefor; but nothing herein contained shall affect or destroy any civil action to which any person would be entitled against such attorney respecting the same or any criminal prosecution to which the accused would be otherwise liable.

SEC. 10. All laws and parts of laws in conflict with this act are hereby repealed.

Approved Oct. 3, 1903.



## CODE OF ETHICS.

The purity and efficiency of judicial administration, which under our system, is largely governmental itself, depend as much upon the character, conduct and demeanor of attorneys in this great trust, as upon the fidelity and learning of courts, or the honesty and intelligence of juries.

"There is perhaps no profession after that of the sacred ministry, in which a high-toned morality is more imperatively necessary than that of the law. There is certainly without any exception, no profession in which so many temptations beset the path to swerve from the lines of strict integrity; in which so many delicate and difficult questions of duty are constantly arising. There are pitfalls and mantraps at every step, and the mere youth, at the very outset of his career, needs often the prudence and self-denial, as well as the moral courage, which belongs commonly to riper years. High moral principle is the only safe guide; the only torch to light his way amidst darkness and abstrusion."—*Sharswood*.

A comprehensive summary of the duties specifically enjoined by law upon attorneys, which they are sworn "not to violate," is found in section 791 of the Code of Alabama.

These duties are:

"First—To support the Constitution and laws of this State and the United States.

"Second—To maintain the respect due to courts of justice and judicial officers.

"Third—To employ for the purpose of maintaining the causes confided to them, such means only as are consistent with truth, and never seek to mislead the judges by any artifice or false statement of the law.

"Fourth—To maintain inviolate the confidence, and at every peril to themselves, to preserve the secrets of their clients.

"Fifth—To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or a witness, unless required by the justice of the cause with which they are charged.

"Sixth—To encourage neither the commencement nor continuance of an action, proceeding from any motive of passion or interest.

"Seventh—Never to reject, for any consideration personal to themselves, the cause of the defenseless and oppressed."

No rule will determine an attorney's duty in the varying phases of every case. What is right and proper must, in the absence of statutory rules and an authoritative code, be ascertained in view of the peculiar facts, in the light of conscience, and the conduct of honorable and distinguished attorneys in similar cases, and by analogy to the duties enjoined by statute, and the rules of good neighborhood.

The following general rules are adopted by the Alabama State Bar Association for the guidance of its members:

*Duties of Attorneys to Courts and Judicial Officers.*

1.—The respect enjoined by law for courts and judicial officers is exacted for the sake of the office, and not for the individual who administers it. Bad opinion of the incumbent, however well founded, can not excuse the withholding of the respect due the office, while administering its functions.

2.—The proprieties of the judicial station, in a great measure, disable the judge from defending himself against strictures upon his official conduct. For this reason, and because such criticisms tend to impair public confidence in the administration of justice, attorneys should, as a rule, refrain from published criticism of judicial conduct, espe-

cially in reference to causes in which they have been of counsel, otherwise than in courts of review, or when the conduct of a judge is necessarily involved in determining his removal from or continuance in office.

3.—Marked attention and unusual hospitality to a judge, when the relation of the parties are such that they would not otherwise be extended, subject both judge and attorneys to misconstruction, and should be sedulously avoided. A self-respecting independence in the discharge of the attorney's duties, which at the same time does not withhold the courtesy and respect due the judge's station, is the only just foundation for cordial personal and official relations between bench and bar. All attempts by means beyond these to gain special personal consideration and favor of a judge are disreputable.

4.—Courts and judicial officers, in their rightful exercise of their functions, should always receive the support and countenance of attorneys against unjust criticism and popular clamor; and it is an attorney's duty to give them his moral support in all proper ways, and particularly by setting a good example in his own person of obedience to law.

5.—The utmost candor and fairness should characterize the dealings of attorneys with the courts and with each other. Knowingly citing as authority an overruled case, or treating a repealed statute as in existence—knowingly misquoting the language of a decision or text-book—knowingly misquoting the contents of a paper, the testimony of a witness, or the language or argument of opposite counsel—offering evidence which it is known the court must reject as illegal, to get it before the jury, under the guise of arguing its admissibility—and all kindred practices—are deceits and evasions unworthy of attorneys.

Purposely concealing or withholding in the opening argu-

ment, positions intended finally to be relied on, in order that opposite counsel may not discuss them, is unprofessional. Courts and juries look with disfavor on such practices, and are quick to suspect the weakness of the cause which has need to resort to them.

In the argument of demurrers, admission of evidence, and other questions of law, counsel should carefully refrain from "side-bar" remarks and sparring discourse, to influence the jury or bystanders. Personal colloquies between counsel tend to delay, and promote, unseemly wrangling, and ought to be discouraged.

6.—Attorneys owe to the courts and the public whose business the courts transact, as well as to their own clients, to be punctual in attendance on their causes; and whenever an attorney is late he should apologize or explain his absence.

7.—One side must always lose the cause; and it is not wise, nor respectful to the court, for attorneys to display temper because of an adverse ruling.

*Duties of Attorneys to Each Other, to Clients and the Public.*

8.—An attorney should strive at all times, to uphold the honor, maintain the dignity, and promote the usefulness of the profession; for it is so interwoven with the administration of justice that whatever redounds to the good of one advances the other; and the attorney thus discharges, not merely an obligation to his brothers, but a high duty to the State and his fellow-man.

9.—An attorney should not speak slightly or disparagingly of his profession, or pander in any way to unjust popular prejudices against it; and he should scrupulously refrain at all times, and in all relations of life, from availing himself of any prejudice or popular misconception against lawyers, in order to carry a point against a brother attorney.

10.—Nothing has been more potential in creating and pandering to popular prejudice against lawyers as a class, and in withholding from the profession the full measure of public esteem and confidence which belong to the proper discharge of its duties, than the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is an attorney's duty to do everything to succeed in his client's cause.

An attorney "owes entire devotion to the interest of his client, warm zeal in the maintenance and defense of his cause, and the exertion of the utmost skill and ability," to the end that nothing may be taken or withheld from him, save by the rules of law, legally applied. No sacrifice or peril, even to loss of life itself can absolve from the fearless discharge of this duty. Nevertheless, it is steadfastly to be borne in mind that the great trust is to be performed within and not without the bounds of the law which creates it. The attorney's office does not destroy man's accountability to the Creator, or loosen the duty of obedience to law, and the obligation to his neighbor; and it does not permit, much less demand, violation of law, or any manner of fraud or chicanery, for the client's sake.

11.—Attorneys should fearlessly expose before the proper tribunals corrupt or dishonest conduct in the profession; and there should never be any hesitancy in accepting employment against an attorney who has wronged his client.

12.—An attorney appearing or continuing as private counsel in the prosecution for a crime of which he believes the accused innocent, forswears himself. The State's attorney is criminal, if he presses for a conviction, when upon the evidence he believes the prisoner innocent. If the evidence is not plain enough to justify a *nolle pros.*, a

public prosecutor should submit the case, with such comments as are pertinent, accompanied by a candid statement of his own doubts.

13.—An attorney cannot reject the defense of a person accused of a criminal offense, because he knows or believes him guilty. It is his duty by all fair and honorable means to present such defenses as the law of the land permits, to the end that no one may be deprived of life or liberty, but by due process of law.

14.—An attorney must decline in a civil cause to conduct a prosecution, when satisfied that the purpose is merely to harrass or injure the opposite party, or to work oppression and wrong.

15.—It is bad practice for an attorney to communicate or argue privately with the judge as to the merits of his cause.

16.—Newspaper advertisements, circulars, and business cards, tendering professional services to the general public, are proper; but special solicitation of particular individuals to become clients ought to be avoided. Indirect advertisement for business, by furnishing or inspiring editorials or press notices, regarding causes in which the attorney takes part, the manner in which they are conducted, the importance of his position, the magnitude of the interests involved, and all other like self-laudation, is of evil tendency, and wholly unprofessional.

17.—Newspaper publications by an attorney as to the merits of pending or anticipated litigation, call forth discussion and reply from the opposite party, tend to prevent a fair trial in the courts, and otherwise prejudice the due administration of justice. It requires a strong case to justify such publications; and when proper, it is unprofessional to make them anonymously.

18.—When an attorney is a witness for his client except

as to formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial or the cause to other counsel. Except when essential to the ends of justice, an attorney should scrupulously avoid testifying in court in behalf of his client, as to any matter.

19.—The same reasons which make it improper in general for an attorney to testify for his client, apply with greater force to assertions, sometimes made by counsel in argument, of personal belief in the client's innocence or the justice of his cause. If such assertions are habitually made they lose all force and subject the attorney to falsehoods; while the failure to make them in particular cases will often be esteemed a tacit admission of belief of the client's guilt, or the weakness of his cause.

20.—It is indecent to hunt up defects in titles and the like and inform thereof, in order to be employed to bring suit; or to seek out a person supposed to have a cause of action, and endeavor to get a fee to litigate about it. Except where ties of blood, relationship or trust, make it an attorney's duty, it is unprofessional to volunteer advice to bring a lawsuit. Stirring up strife and litigation is forbidden by law, and disreputable in morals.

21.—Communications and confidence between client and attorney are the property and secrets of the client, and can not be divulged, except at his instance; even the death of the client does not absolve the attorney from his obligation of secrecy.

22.—The duty not to divulge the secrets of clients extend further than mere silence by the attorney, and forbids accepting retainers or employment afterwards from others involving the client's interests, in the matters about which the confidence was reposed. When the secrets or confidence of a former client may be availed of or be material, in a subsequent suit, as the basis of any judgment

which may injuriously affect his rights, the attorney cannot appear in such cause, without the consent of his former client.

23.—An attorney can never attack an instrument or paper drawn by him for any infirmity apparent on its face; nor for any other cause where confidence has been reposed as to the facts concerning it. Where the attorney acted as a mere conveyancer, and was not consulted as to the facts, and unknown to him, the transaction amounted to a violation of the criminal laws he may assail it on that ground, in suits between third persons, or between parties to the instrument and strangers.

24.—An attorney openly, and in his true character, may render purely professional services before committees regarding proposed legislation, and in advocacy of claims before departments of the government, upon the same principle of ethics which justify his appearance before the courts; but it is immoral and illegal for an attorney so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding, to influence action.

25.—An attorney can never represent conflicting interests in the same suit or transaction, except by express consent of all so concerned, with full knowledge of the facts. Even then such a position is embarrassing, and ought to be avoided. An attorney represents conflicting interests within the meaning of this rule, when it is his duty, in behalf of one of his clients to contend for that which duty to other clients in the transaction requires him to oppose.

26.—“It is not a desirable professional reputation to live and die with—that of a rough tongue, which makes a man to be sought out and retained to gratify the malevolent feeling of a suitor, in hearing the other side well lashed and villified.”



27.—An attorney is under no obligation to minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client cannot be made the keeper of the attorney's conscience in professional matters. He cannot demand as of right that his attorney shall abuse the opposite party or indulge in offensive personalities. The attorney under the solemnity of his oath, must determine for himself whether such a course is essential to the ends of justice and therefore justifiable.

28.—Clients and not their attorneys are the litigants; and whatever may be the ill-feeling existing between clients, it is unprofessional for attorneys to partake of it in their conduct and demeanor to each other, or to suitors in the case.

29.—In the conduct of litigation and the trial of causes, the attorneys should try the merits of the cause, and not try each other. It is not proper to allude to, or comment upon the personal history, or mental or physical peculiarities or idiosyncracies of opposite counsel. Personalities should always be avoided, and the utmost courtesy always extended to an honorable opponent.

30.—As to incidental matters pending the trial, not affecting the merits of the case, or working substantial prejudice to the rights of the client, such as forcing the opposite attorney to trial when he is under affliction or bereavement; forcing the trial on a particular day to the serious injury of the opposite attorney, when no harm will result from a trial at a different time; the time allowed for signing a bill of exceptions, crossing interrogatories, and the like; the attorney must be allowed to judge. No client has a right to demand that his attorney shall be illiberal in such matters, or that he should do anything therein repugnant to his own sense of honor and propriety; and if such a course is insisted on, the attorney should retire from the cause.

31.—Where an attorney has more than one regular client, the oldest client in the absence of some agreement should have the preference of retaining the attorney as against his other clients in litigation between them.

32.—The miscarriages to which justice is subject, and the uncertainty of predicting results, admonish attorneys to beware of bold and confident assurances to clients, especially where the employment depends upon the assurance, and the case is not plain.

33.—Prompt preparation for trial, punctuality in answering letters and keeping engagements, are due from an attorney to his client, and do much to strengthen their confidence and friendship.

34.—An attorney is in honor bound to disclose to the client at the time of the retainer, all the circumstances of his relation to the parties, or interest or connection with the controversy, which might justly influence the client in the selection of his attorney. He must decline to appear in any cause where his obligation or relations to the opposite parties will hinder or seriously embarrass the full and fearless discharge of all his duties.

35.—An attorney should endeavor to obtain full knowledge of his client's cause before advising him, and is bound to give him a candid opinion of the merits and probable result of his cause. When the controversy will admit of it, he ought to seek to adjust it without litigation, if practicable.

36.—Where an attorney, during the existence of a relation, has lawfully made an agreement which binds his client, he cannot honorably refuse to give the opposite party evidence of the agreement, because of his subsequent discharge or instructions to that effect by his former client.

37.—Money or other trust property coming into the possession of the attorney should be promptly reported, and

never commingled with his private property or used by him, except with the client's knowledge and consent.

38.—Attorneys should, as far as possible, avoid becoming either borrowers or creditors of their clients; and they ought scrupulously to refrain from bargaining about the subject matter of their litigation, so long as the relation of attorney and client continues.

39.—Natural solicitude of clients often prompts them to offer assistance of additional counsel. This should not be met, as it sometimes is, as evidence of want of confidence; but after advising frankly with the client, it should be left to his determination.

40.—Important agreements affecting the rights of clients should, as far as possible, be reduced to writing, but it is dishonorable to avoid performance of an agreement fairly made, because not reduced to writing, as required by rules of court.

41.—An attorney should not ignore known customs or practice of the bar or of a particular court, even when the law permits, without giving opposing counsel timely notice.

42.—An attorney should not attempt to compromise with the opposite party, without notifying his attorney, if practicable.

43.—When attorneys jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the course to be pursued should be left to his determination. The client's decision should be cheerfully acquiesced in unless the nature of the difference makes it impracticable for the attorney to co-operate heartily and effectively; in which event, it is his duty to ask to be discharged.

44.—An attorney coming into a cause in which others are employed, should give notice as soon as practicable, and ask for a conference, and if the association is objectionable to the attorney already in the cause, the other

attorney should decline to take part, unless the first attorney is relieved.

45.—An attorney ought not to engage in discussion or arguments about the merits of the case with the opposite party, without notice to his attorney.

46.—Satisfactory relations between attorney and client are best preserved by a frank and explicit understanding at the outset, as to the amount of the attorney's compensation; and where it is possible, this should always be agreed on in advance.

47.—In general it is better to yield something to a client's dissatisfaction at the amount of the fee, though the sum be reasonable, than to engage in a law suit to justify it, which ought always to be avoided, except as a last resort, to prevent imposition or fraud.

48.—Men, as a rule, overestimate rather than under value the worth of their services, and attorneys in fixing their fees should avoid charges which unduly magnify the value of their advice and services, as well as those which practically belittle them. A client's ability to pay can never justify a charge for more than the service is worth; though his poverty may require a less charge in many instances, and sometimes none at all.

49.—An attorney may charge a regular client, who entrusts him with all his business, less for a particular service than he would charge a casual client for like services. The element of uncertainty of compensation where a contingent fee is agreed on, justifies higher charges than where compensation is assured.

50.—In fixing fees the following elements should be considered: First. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to properly conduct the cause. 2d. Whether the particular case will debar the attorney's appearance for

others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that the attorney would otherwise be employed; and herein of the loss of other business while employed in the particular case, and the antagonism with other clients growing out of the employment. 3d. The customary charges of the bar for similar services. 4th. The real amount involved and the benefit resulting from the services. 5th. Whether the compensation was contingent or assured. 6th. Is the client a regular one, retaining the attorney in all his business? No one of these considerations is in itself controlling. They are mere guides in ascertaining what the service was really worth; and in fixing the amount it should never be forgotten that the profession is a branch of the administration of justice and not a mere money getting trade.

51.—Contingent fees may be contracted for; but they lead to many abuses, and certain compensation is to be preferred.

52.—Casual and slight services should be rendered without charge by one attorney to another in his personal cause; but when the service goes beyond this, an attorney may be charged as other clients. Ordinary advice and services to the family of a deceased attorney should be rendered without charge in most instances; and where the circumstances make it proper to charge, the fees should generally be less than in cases of other clients.

53.—Witnesses and suitors should be treated with fairness and kindness. When essential to the ends of justice to arraign their conduct or testimony, it should be done without vilification or unnecessary harshness. Fierceness of manner and uncivil behavior can add nothing to the truthful dissection of a false witness's testimony and often rob deserved strictures of proper weight.

54.—It is the duty of the court and its officers to provide for the comfort of jurors. Displaying special concern for their comfort, and volunteering to ask favors for them, while they are present—such as frequent motions to adjourn trials, or take a recess, solely on the ground of the jury's fatigue, or hunger, and uncomfortableness of their seats, or the court room, and the like—should be avoided. Such intervention of attorneys, when proper, ought to be had privately with the court; whereby there will be no appearance of fawning upon the jury, nor ground for ill-feeling of the jury towards the court or opposite counsel, if such requests are denied. For like reasons, one attorney should never ask another in the presence of the jury, to consent to its discharge or dispersion; and when such a request is made by the court, the attorneys, without indicating their preference, should ask to be heard after the jury withdraws.

55.—An attorney ought never to converse privately with jurors about the case; and must avoid all unnecessary communication, even as to matters foreign to the cause, both before and during the trial. Any other course, no matter how blameless the attorney's motives, gives color to the imputing evil designs, and often leads to scandal in the administration of justice.

56.—An attorney assigned as counsel for an indigent prisoner ought not to ask to be excused for any light cause, and should always be a friend to the defenceless and oppressed.

## CONSTITUTION.

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### ARTICLE I.

The object of the Association shall be to advance the science of Jurisprudence, promote the Administration of justice throughout the State, uphold the honor of the the profession of the law, and establish cordial intercourse among the members of the Bar of Alabama. This Association shall be known as "The Alabama State Bar Association."

### ARTICLE II.

Any person shall be eligible to membership in this Association who shall be a member of the Bar of the State in good standing, and who shall also be nominated as hereinafter provided.

### ARTICLE III.

The officers of this Association shall consist of one President, five Vice-Presidents, a Secretary, a Treasurer, a Central Council, and an Executive Committee, which Committee shall be composed of five members, one of whom shall be the Secretary and Treasurer of the Association.

Each of these officers, council and committee, shall be elected at each annual meeting by the Association for the year next ensuing, but the same person shall not be elected President two years in succession. All such elections shall be by ballot. The officers elected shall hold office until their successors are elected and qualified according to the Constitution and By-Laws.

## ARTICLE IV.

The Central Council shall consist of five members, and shall be at all times an advisory board for consultation and conference when called on for that purpose by the President or any Vice-President who may for the time being be acting as President.

## ARTICLE V.

The President, by and with the advice and consent of the Central Council, may establish a Local Council in any county of this State by issuing a warrant to that effect, naming therein the persons composing such Local Council. Each Local Council shall consist of not less than three nor more than seven members. No person shall be eligible to appointment as a member of any Local Council who is not at the time a member of this Association.

## ARTICLE VI.

The Central Council and Local Councils shall have full power to nominate applicants to become members of this Association.

## ARTICLE VII.

Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge. One year's annual dues shall be paid in advance by each member at the time of his election.



## ARTICLE VIII.

By-Laws may be adopted at any annual meeting of the Association by a majority of the members present.

## ARTICLE IX.

The following committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each.

1. On Jurisprudence and Law Reform.
2. On Judicial Administration and Remedial Procedure.
3. On Legal Education and Admission to the Bar.
4. On Publication.
5. On Grievances.
6. On Correspondence.
7. On Legislation.
8. On Local Bar Associations.

A majority of the members of any committee, or of the Central Council who may be present at any meeting of such committee or council, shall constitute a quorum for the purposes of such meeting. Vacancies in any office provided for by this Constitution shall be filled by appointment by the President, and the appointees shall hold office until the next meeting of the Association.

## ARTICLE X.

The Central Council and Executive Committee shall each perform such duties as may be assigned to them by the President, or as may be defined by the By-Laws, except as herein otherwise directed.

## ARTICLE XI.

This Association shall meet annually at such time and

place as the Executive Committee may determine, and those present at such meeting shall constitute a quorum. The Executive Committee shall require thirty days' notice of the time and place of meeting, by publication in a newspaper, to be given; which publication shall be made by the Secretary.

#### ARTICLE XII.

The President shall open each annual meeting of the Association with an address in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several States and by Congress during the preceding year.

#### ARTICLE XIII.

The Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than thirty members are present.

#### ARTICLE XIV.

Each Local Council shall perform such duties as it may be called upon to perform by the President, or as may be defined by the By-Laws.

#### ARTICLE XV.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association or in his profession, on conviction thereof, as may be prescribed by the By-Laws.

#### ARTICLE XVI.

The Constitution shall go into immediate effect. This

Association shall be incorporated under the laws of the State of Alabama as soon as practicable, and until such incorporation all money and property of said Association shall be vested in the President and Treasurer, as Trustees thereof, who shall pay over and deliver the same to said corporation as its property as soon as the corporation is created by law.

## ARTICLE XVII.

The two offices of Secretary and Treasurer may be filled by one person, if the Association shall, by its By-Laws, so determine.

## BY-LAWS.

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### I.

The President shall preside at all meetings of the Association, and in case of his absence one of the Vice-Presidents shall preside.

### II.

The Secretary shall keep a record of all meetings of the Association, and all other matters of which a record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association with the concurrence of the President. He shall notify the officers and members of their election, and shall keep a roll of the members, and shall issue notices of all meetings.

### III.

The Treasurer shall collect, and, under the direction of the Executive Committee, disburse all funds of the Association; he shall report annually, and oftener if required; he shall keep regular accounts, which shall be at all times open to inspection of the members of the Association. His accounts shall be audited by the Executive Committee. Before discharging any of the duties of his office, the incumbent shall execute a bond with good and sufficient surety, to be approved by the President, payable to the President and his successors in office, in the sum of five thousand dollars, for the use of the Association and conditioned that he will well and faithfully perform the duties of his office so long as he discharges any of the duties thereof.

## IV.

The Executive Committee shall meet at least once a month, except in July, August and September. They shall have power to make such regulations, not inconsistent with the Constitution and By-Laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of their proceedings, which shall be read at the ensuing meeting of the Association; and it shall be their duty to present business for the Association. They shall have no power to make the Association liable for any debts amounting to more than half the amount in the Treasurer's hands in cash, and not subject to prior liabilities. They shall perform such other duties as are required of them by the Constitution, or as may be assigned to them by the President.

## V.

The Central Council shall perform all such duties as may be required of them by the Constitution or as are assigned to them by the President, but they shall not be required to keep a record of their proceedings, nor shall they make any report to any meeting of the Association, unless such report is required by the Association, and then only as to the particulars about which they are required to report, and the provisions of this section shall apply also to Local Councils.

## VI.

At each annual, stated or adjourned meeting of the Association the order of business shall be as follows :

1. Reading of minutes of preceding meeting.
2. Address of the President.
3. Report of the Treasurer.

4. Report of the Executive Committee.
5. Elections, if any, to membership.
6. Reports of Standing Committees.
7. Reports of Special Committees.
8. Election of Officers and Appointment of Committees.
9. Miscellaneous business.

This order of business may be changed by a vote of the majority of the members present.

The parliamentary rules and orders contained in Cushing's Manual, except as otherwise herein provided, shall govern all meetings of the Association.

#### VII.

If any person elected does not, within one month after notice of his election, signify his acceptance of membership by a letter to the Secretary to that effect, and by payment of his admission fee, he shall be deemed to have declined to become a member.

#### VIII.

In pursuance of Article IX of the Constitution, there shall be the following Standing Committees:

1.—A Committee on Jurisprudence and Law Reform, who shall be charged with the duty of attention to all proposed changes in the law, and of recommending such as in their opinion may be entitled to the favorable consideration of the Association.

2.—A Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the working of our judicial system, the collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending, from time to time, to the Association such action as they may deem expedient.

3.—A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what change it is expedient to propose in the system and mode of legal education, and of admission to the practice of the profession in the State of Alabama.

4.—A Committee on Publication, who shall be charged with the duty of examining and reporting, when so required by the Association, upon matters proposed to be published by its authority.

5.—A Committee on Grievances who shall be charged with the hearing of all complaints that may be made in matters affecting the interest of the legal profession and the practice of law, and the administration of justice, and to report the same to this Association, with such recommendations as they may deem advisable; and said committee shall, in behalf of the Association, institute and carry on such proceedings against offenders, and to such an extent as the Association may order, the cost of such proceeding to be paid by the Executive Committee out of moneys subject to be appropriated by them.

6.—A Committee on Correspondence, who shall be charged with the duty of corresponding with the officers and committees of other Bar Associations for the purpose of causing action relative to law questions of national importance.

7.—A Committee on Legislation, who shall be charged with the duty of ascertaining and reporting to each meeting of the Bar Association such legislation as it may approve of and consider necessary and proper to carry into effect the suggestions contained in the reports of the various committees, and papers read at any previous meeting, and it shall be the duty of said committee to prepare, at the expense of this Association, and cause to be printed

and distributed by the Secretary to the members of the Association, at least thirty days before each annual meeting, in the form of bills or resolutions, all of such measures as may be reported by it for their consideration, together with the report of the committee.

All reports submitted to the Association recommending changes in the statutory law, or amendments thereto, shall be accompanied by bills or joint resolutions in the form to be presented to the General Assembly for enactment.

8.—A Committee on Local Bar Associations, who shall be charged with the duty of encouraging the organization and maintenance of local Bar Associations throughout the State, and their affiliation with this Association.

9.—A special committee of three members, to be known as the Committee on Legislative Enactment, shall be appointed by the President at the meeting next before each session of the General Assembly, which shall be continued until the annual meeting after the next session of the General Assembly, and it shall be the duty of said committee to present to the General Assembly in form of a memorial, all such bills and joint resolutions, the enactment of which has been recommended by this Association. Before the meeting of the General Assembly, a copy thereof shall be sent by mail by the Secretary of this Association to each member of the General Assembly, at least thirty days before its meeting, and as soon as it is organized, the Secretary shall place a copy thereof on the desk of each member. Such memorial shall contain a copy of each bill and joint resolution, as approved by this Association, and the reasons for their adoption, as shown by this Association, and such additional argument as it may deem necessary. And it shall be the duty of the committee to take all such steps as they may deem proper to insure the en-



actment of such bills and joint resolutions. The expenses incurred by the committee shall be paid out of the funds of the Association. It shall be the duty of this committee to report to the meeting of the Association next after the meeting of the General Assembly, and accompany their report with a copy of the memorial, which they shall have submitted to the General Assembly.

## IX.

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of this Association, and shall continue in office until the annual meeting of the Association next after their appointment, and until their successors are appointed, with power to adopt rules for their own government not inconsistent with the Constitution or these By-Laws. Any standing committees of the Association may, by rule, provide that three successive absences from the meetings of the committee, unexcused, shall be deemed a resignation of the members so absent, of his place upon the committee. Any standing committee of the Association may, by rule, impose upon its members a fine for non-attendance and may provide for the disposition of the fines collected under such rule.

## X.

Whenever any complaint shall be preferred against a member of the Association for misconduct in his relations to this Association, or in his profession, the member or members preferring such complaint shall present it to the Committee on Grievances in writing, and subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The committee shall, thereupon, examine the complaint and if they are of opinion that the matters therein alleged

are of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than five days of the time and place when the committee will meet for the consideration thereof, to be served on the member complained of, either personally, or by leaving the same at his place of business during office hours properly addressed to him. If after hearing his explanation the committee shall deem it proper that there should be a trial of the charge, they shall cause a similar notice of five days of the time and place of the trial to be served on the party complained of.

The committee shall be furnished with a list of the witnesses, their names and places of residence, who it is proposed shall be examined to sustain the charge which shall accompany the complaint when made to the committee; and when the day is set for trial the member complained of, upon his demand therefor, shall be entitled to a copy of said list of witnesses. At the time and place appointed for the trial, or at such other time as may be granted by the committee, the member complained of shall file a written answer or defense, and should he fail to do so, the committee may proceed thereupon to the consideration of the complaint.

The committee shall thereupon and at such other times and places as they may adjourn to, proceed to hear the evidence adduced and try the complaint, and shall determine all questions of evidence.

The complainant and the member complained of shall each be allowed to appear personally and by counsel who must be members of the Association; and the complainant and the member complained of shall each be competent witnesses. The witnesses shall vouch for the truth of their statements on their word of honor. The committee shall have power to summon witnesses, and if any such wit-

nesses are members of the Association, a neglect or refusal to appear may be reported to the Association by the committee and treated as misconduct

The committee, of whom at least four must be present at the trial, except that a less number may adjourn from time to time, shall hear and decide the allegations submitted to them; and if they find the complaint or any material part of it to be true, they shall so report to the Association, with their recommendation as to the action to be taken thereon.

The decision of the committee shall be served on the member complained of; and if the decision be that the complaint or any material part thereof is true, and in that case only, the committee shall also serve a copy of the complaint, answer, if there be an answer, and decision on the President of the Association; and if requested either by the member or members complaining, or the member complained of, shall annex thereto a copy of the evidence taken, which said document shall be regarded as a report of the committee to the Association.

Every such report shall be acted on only by the Association at an annual, stated or adjourned meeting of the Association and of which the member complained of shall have due notice, to be served upon him by direction of the committee. The Association shall thereupon proceed to take such action on said report as they may see fit, provided only that no member shall be expelled unless by the vote of two-thirds of the members present and voting.

Whenever any trial shall be determined on, the member complained of may object for cause to any of the members of said committee, which causes he shall state in writing and present to the committee, thereupon the committee shall report the facts to the President, and enclose to him a copy of the objections for cause; and the President shall

forthwith summon the Central Council to meet with him and determine what weight, if any, the objections for cause are justly entitled to have, and if the President and a majority of the Central Council present and voting, shall determine that the objections for cause are not well taken, and that the same are overruled, the President shall so inform the Committee on Grievances, but if the President and a majority of the Central Council as aforesaid shall determine that any of said objections for cause to any member of the Committee on Grievances are well taken then the President shall so inform said committee, and forthwith appoint another member or members to supply the temporary vacancy caused thereby; and the method herein provided shall be resorted to until a committee is obtained against whom the member complained of urges no just objection for cause.

All the foregoing proceedings shall be kept secret, except as their publication is hereinbefore provided for, unless otherwise ordered by the Association.

#### DISBARMENTS.

That whenever the Central Council shall direct the prosecution for disbarment of an attorney, if in their judgment it shall be necessary or desirable that assistant counsel should be appointed to assist in the prosecution of said cause, they shall appoint a member of this Association, with instructions to assist in such prosecution, and it shall be the duty of such member to comply with such order of the Central Council, and any member of this Association so appointed who shall, without good excuse, fail or refuse to assist in such prosecution, shall be expelled from the Association. And the Central Council shall report to the Association all such failures to prosecute, and in the event of failure of any attorney so appointed, the Central Council shall appoint some other member of

this Association to act as such assistant prosecuting attorney.

## XI.

Nomination of candidates to fill the respective offices may be made at the time of the election by any member, and as many candidates may be nominated for each office as members may wish to name, but all elections, whether to office or membership must be by ballot. A majority of the votes cast shall be sufficient to elect to office; but five negative votes shall be sufficient to defeat an election to membership.

## XII.

All vacancies in any office or committee of this Association shall be filled by appointment of the President, and the persons thus appointed shall hold for the unexpired term of his predecessor; but if a vacancy occur in the office of President, it shall be filled by the Association at its first stated meeting occurring more than ten days after the happening of such vacancy and the person elected shall hold office for the unexpired term of his predecessor.

## XIII.

Every member of this Association shall pay his annual dues to the Treasurer on the first day of March in each year, and no person shall be qualified to exercise any right or privilege of membership who is in default in that respect for a period of sixty days after that time; *provided however*, that at any time before next meeting of the Association thereafter such person may be restored to membership by order of the Executive Committee, and upon his having then paid his annual dues to the Treasurer; and all persons who have ceased to be members of the Association by reason of failure to pay their annual dues will no longer be borne upon the roll as members thereof by the Secretary and Treasurer.

## XIV.

These By-Laws may be amended at any stated, adjourned or annual meeting of the Association by a majority vote of those present.

## XV.

Any officer may resign at any time upon settling his accounts with the Association. A member may resign at any time upon the payment of all dues to the Association; and from the date of the receipt by the Secretary of a notice of resignation with an endorsement thereon by the Treasurer that all dues have been paid as above provided, the person giving such notice shall cease to be a member of the Association.

## XVI.

The offices of Secretary and Treasurer shall be filled by the Secretary, and his annual salary shall be three hundred dollars, one-half of which shall be due on the first day of May, and the other half on the first day of November in each year, but may be paid earlier or at any other time if the Executive Committee shall, in writing, so direct, but this shall be in full of all compensation to him. No other officer of the Association shall receive any salary or compensation.

## XVII.

The Association shall have its annual meeting at such time and place as the Executive Committee may determine, and continue in session until all the business before it is disposed of. If the President and Central Council shall determine that it is necessary for said Association to held any other meeting, during any year, the same shall be held at such time and place as the Central Council may fix, and upon twenty days notice of such time and place to be given by the Secretary, by publication in a public newspaper, and the Secretary shall give this notice upon the order of the President.

## FORMER PRESIDENTS.

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**\*WALTER L. BRAGG,**

January 20, 1879, to December 4, 1879.

**EDMUND W. PETTUS,**

December 4, 1879, to December 2, 1880.

**\*JOHN LITTLE SMITH,**

December 2, 1880, to December 30, 1881.

**\*EDWARD A. O'NEAL,**

December 30, 1881, to November 29, 1882.

**\*M. L. STANSEL,**

November 29, 1882, to August 2, 1883.

**\*HENRY C. SEMPLE,**

August 2, 1883, to August 7, 1884.

**\*N. H. R. DAWSON,**

August 7, 1884, to December 3, 1884.

**\*WILLIAM H. BARNES,**

December 3, 1884, to December 3, 1885.

**\*WILLIAM M. BROOKS,**

December 3, 1885, to December 2, 1886.

**\*HENRY C. TOMPKINS,**

December 2, 1886, to December 15, 1887.

**\*WILBUR F. FOSTER,**

December 15, 1887, to December 20, 1888.

**MILTON HUMES,**

December 20, 1888, to August 1, 1889.

**\*THOMAS H. WATTS,**

August 1, 1889, to August 7, 1890.

**HANNIS TAYLOR,**

August 7, 1890, to July 9, 1891.

**\*Deceased.**

## ALABAMA STATE BAR ASSOCIATION.

A. B. M'EACHIN,

July 9, 1891, to July 7, 1892.

\*A. C. HARGROVE,

July 7, 1892, to July 8, 1893.

J. R. DOWDELL,

July 6, 1893, to July 11, 1894.

JAMES E. WEBB,

July 11, 1894, to July 11, 1895.

\*DANIEL S. TROY,

July 11, 1895, to September 25, 1895.

\*RICHARD C. JONES,

First Vice-President, acted as President

from the death of Col. Troy,

September 25, 1895, to August 6, 1896.

RICHARD H. CLARKE,

August 6, 1896, to July 1, 1897.

JOHN P. TILLMAN,

July 1, 1897, to June 18, 1898.

\*JOHN D. ROQUEMORE,

June 18, 1898, to June 17, 1899.

JOSEPH J. WILLETT,

June 17, 1899, to June 16, 1900.

THOMAS G. JONES,

June 16, 1900, to June 29, 1901.

EDWARD L. RUSSELL,

June 29, 1901, to July 5, 1902.

LAWRENCE COOPER,

July 5, 1902, to June 20, 1903.

EDWARD DEGRAFFENRIED,

June 20, 1903, to July 9, 1904.

THOMAS R. ROULHAC,

July 9, 1904.

\*Deceased.



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1904--1905.

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| Gunter, Gaston .....    | Montgomery       |

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| Jones, George P.     | Florence      |
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| Knox, John B.        | Anniston      |
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| Latady, A.           | Birmingham    |
| LeG and, M. P.       | Montgomery    |
| Letcher, J. T.       | Montgomery    |
| Ligon, R. F.         | Montgomery    |
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| Lowe, R. J.          | Birmingham    |
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| Maner, O. C.         | Montgomery    |
| Martin, W. L.        | Montgomery    |
| Massie, P. C.        | Montgomery    |
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| McDowell, C. S., Jr. | Enfauila      |
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| McKinley, John       | Eutaw         |
| Mallory, H. S. D.    | Selma         |
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| Mullins, Tipton      | Clanton       |
| Murphy, J., Jr.      | Huntsville    |

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| O'Neal, Emmet          | Florence          |
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| Pitts, P. H.           | Selma             |
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| Sayre, T. Scott        | Montgomery        |
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| Smith, Mac. A.         | Prattville        |
| Smith, J. A. W.        | Birmingham        |
| Smith, John V.         | Montgomery        |
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| Speake, Paul           | Huntsville        |
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| Stewart, James H.      | Marion            |
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|                          |            |
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| Tomlinson, John W.....   | Birmingham |
| Trotter, James.....      | Bessemer   |
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| Webb, James E.....       | Birmingham |
| Weil, Leon.....          | Montgomery |
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| Wilson, Massey.....      | Montgomery |
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| Willett, J. J.....       | Anniston   |
| Wood, S. A.....          | Birmingham |



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# PROCEEDINGS

OF THE

TWENTY-EIGHTH ANNUAL MEETING

OF THE

Alabama State Bar Association,

HELD AT

MONTGOMERY, ALA., JUNE 30TH AND JULY 1ST

1905.





**PROCEEDINGS**  
**OF THE**  
**TWENTY-EIGHTH ANNUAL MEETING**  
**OF THE**  
**ALABAMA STATE BAR**  
**ASSOCIATION**  
**HELD AT**  
**MONTGOMERY, ALABAMA,**  
**JUNE 30 AND JULY 1**  
**1905**

---

**MONTGOMERY ALA.,**  
**WOODRUFF CO., PRINTERS**  
**1905**



## PROCEEDINGS.

HALL OF THE HOUSE OF REPRESENTATIVES,  
MONTGOMERY, ALA., JUNE 30th. 1905.

The Twenty-eighth Annual Meeting of the Alabama State Bar Association was called to order by the President, Hon. Thomas R. Roulhac, in the Hall of the House of Representatives in the Capitol at Montgomery, Alabama, at 10 o'clock A. M., on Friday, June 30th 1905.

Mr. Callahan:

Mr. President: As Chairman of the Central Council I desire to present the following names for membership in the Bar Association, to put them in nomination in order that they may be elected and participate in the proceedings;

Z. M. P. Inge, W. T. Seibels, W. R. Chapman, Stuart Mackenzie, George M. Marks, P. H. Stern, F. S. Ball, D. G. Cook, Jr., Edmund W. Pettus, Jr., C. C. Whitson, Claude Riley, Alex. M. Garber, E. H. Dryer, C. E. O. Timmerman, Eugene Ballard, W. I. Grubb, W. R. Walker, H. C. Thach, Thomas C. McClellan, D. C. Almon, Lee J. Marx, Allen J. Roulhac, Alex. C. Birch, W. O. Mulky, Terry Richardson, B. K. McMorris, W. J. James, Travis Williams, H. K. White, C. A. Avant, L. C. McCord, R. B. Smythe, Hugh Morrow:

The Secretary:

Mr. President: The Constitution of the Association requires that the election be by ballot, I therefore move that the rules be suspended and Mr. John V. Smith be requested to cast the vote of the Association for the gentlemen nominated.

Motion adopted, and Mr. Smith cast the ballot of the Association for the nominees. The President declared the applicants elected.

4.

ALABAMA STATE BAR ASSOCIATION

The President:

The next order of business is reading the address by the President, which I will now read.

(Appendix)

Mr. Tillman:

Mr. President: It is usual and customary at an early stage of the proceedings of our annual meetings to interrupt the regular business by a motion to appoint a committee to consider and report to this body, officers, for the coming year. In pursuance of this custom I now move that a committee of five be named by the President to consider and report to this body at the appropriate time nominees for officers of this Association for the ensuing year.

Motion adopted.

The President: I will appoint the committee later,

The next order of business is the report of the Central Council:

Mr. Callahan:

Mr. President: The Central Council has been called to meet at 12 o'clock to-day to consider some unfinished business, and I ask that the report be passed until to-morrow. I make a motion to that effect.

Motion was put to the Association and adopted.

The President: The next order of business is the report of the Treasurer.

The Treasurer then read his report, as follows:

**TREASURER'S REPORT.**

MONTGOMERY, ALA., JUNE 30th, 1905

*Mr. President and Gentlemen of the Association:*

The Treasurer submits the following report of the finances of the Association for the year ending June 30, 1905.

# MINUTES TWENTY-EIGHTH ANNUAL MEETING

5.

## RECEIPTS

|                                                   |                  |
|---------------------------------------------------|------------------|
| To balance on hand at meeting, July 8th 1904..... | \$ 419.55        |
| To cash received from annual dues.....            | 910.00           |
| Total .....                                       | <u>\$1329.55</u> |

## DISBURSEMENTS

|       |    |                                                                                        |         |
|-------|----|----------------------------------------------------------------------------------------|---------|
| 1904  |    |                                                                                        |         |
| July  | 9  | By cash expense of meeting.....                                                        | \$ 2.00 |
| "     | 12 | " " Dinner at Lake.....                                                                | 206.65  |
| "     | 14 | " " Pat McGaully, Stenographer.....                                                    | 30.00   |
| "     | 14 | " " Book of Drafts.....                                                                | 55      |
| "     | 14 | " " Expenses of Hon. F.H. Busbee....                                                   | 19.40   |
| "     | 16 | " " Stamps. ....                                                                       | 2.00    |
| Aug.  | 1  | " " Woodruff Co., Stationery....                                                       | 2.00    |
| "     | 2  | " " Stenographic work for Cen. Council, W. A. Crowe.....                               | 5.00    |
| "     | 3  | " " C. E. Crenshaw, Stenographer....                                                   | 5.00    |
| "     | 5  | " " Stamps. ....                                                                       | 2.00    |
| Sept. | 2  | " " Stamps.....                                                                        | 2.00    |
| Oct.  | "  | " " Stamps.....                                                                        | 1.00    |
| "     | 28 | " " Postage on Proceedings, 27th Annual Meeting.....                                   | 29.00   |
| Nov.  | "  | " " Woodruff Co. 500 copies Proceedings 27th Annual Meeting.....                       | 248.65  |
| "     | 23 | " " Stamps. ....                                                                       | 1.00    |
| "     | 24 | " " Express on copies Proceedings sent President.....                                  | 50      |
| 1905  |    |                                                                                        |         |
| Jan.  | 5  | " " Stamps.....                                                                        | 1.00    |
| Feb.  | 9  | " " Stamps.....                                                                        | 1.00    |
| "     | 27 | " " Postage on Notice of dues....                                                      | 3.00    |
| Mar,  | 1  | " " C. E. Crenshaw, Stenographer....                                                   | 5.00    |
| "     | 14 | " " Stamps. ....                                                                       | 1.00    |
| Apr.  | 10 | " " Woodruff Co., Stationery....                                                       | 5.75    |
| "     | 18 | " " Stamps....                                                                         | 1.00    |
| May   | 5  | " " Exchange on Drafts.....                                                            | 5.00    |
| "     | 10 | " " Stamps. ....                                                                       | 1.00    |
| June  | 1  | " " Stamp.....                                                                         | 1 00    |
| "     | 15 | " " Expense Secretary four trips to Birmingham to attend meetings Central Council..... | 20.80   |
| "     | 21 | " " Woodruff Co., 500 programs 28th Annual Meeting.....                                | 4.75    |

|      |    |   |   |                                                             |                 |
|------|----|---|---|-------------------------------------------------------------|-----------------|
| 6.   |    |   |   | ALABAMA STATE BAR ASSOCIATION                               |                 |
| June | 21 | " | " | Postage on programs.....                                    | 5.00            |
| "    | 21 | " | " | Stamps.....                                                 | 1.00            |
| "    | 23 | " | " | Montgomery Shooting Club, rent of<br>Lake for July 1st..... | 15.00           |
| "    | 30 | " | " | Secretary's Salary to July 1st....                          | 300.00          |
|      |    |   |   |                                                             | <u>\$927.75</u> |

The balance on hand is.....\$401.80

ALEXANDER TROY, *Treasurer.*

Audited and approved June 30th, 1905.

W. M. BLAKEY,  
B. P. CRUM,  
GASTON GUNTER,

Sub-Committee of Executive Committee.

On motion, the report was received and filed.

The President:

The next order of business is the report of the Executive Committee.

Mr. Blakey:

Mr. President: At the request of the Chairman of the Executive Committee, I beg leave to submit the following report:

#### REPORT OF THE EXECUTIVE COMMITTEE.

This committee begs leave to submit the following report:

It has held meetings from time to time as the transaction of business before it seemed to demand.

The Committee has examined through a sub-committee composed of W. M. Blakey, B. P. Crum, and Gaston Gunter, the accounts of the Treasurer, which are found to be entirely correct and neatly kept.

The Committee selected the 30th day of June and the 1st day of July as the dates for the meeting and the place at Montgomery.

The Committee invited the Hon. John W. Judd of Nashville, Tennessee, to deliver the annual address, and we heartily congratulate the Association upon his acceptance of the invitation.

Various members of the Bar have been invited to read papers, and many have accepted as shown in the program sent out by the Secretary.

Since our last meeting two members of the Association have died:

P. C. Massie, Esq., of Montgomery, and Hon. R. L. Hipp of Cullman. We recommend the appointment of a committee for the purpose of preparing suitable memorial sketches of these deceased members.

The Committee has secured Jackson's Lake, at which the session on July 1st will be held; the usual barbecue dinner will be served there, and a special train will leave the Union Depot at 9:30 on that morning to take the members of the Association and their invited guests to the Lake and will return at 5:30 P. M.

We congratulate the Association on its prosperous condition and rapidly increasing membership.

Respectfully submitted,

S. H. DENT, JR., *Chairman.*

B. P. CRUM,

W. M. BLAKEY,

GASTON GUNTER,

ALEX TROY, *Ex-Officio.*

Committee.

On motion, the report was adopted.

The President:

The next order of business is the report of the Committee on Jurisprudence and Law Reform.

Mr. Mallory, Chairman of the Committee, then read the report.

(*Appendix*)

On motion, the report was received and filed.

The President:

The next order of business is a paper by Hon. W. L. Chambers on "The Ministry of the Lawyer."

Hon. W. L. Chambers:

Mr. President and members of the Alabama State Bar Association:

My subject was selected after some delay and serious misgivings, because in looking over the proceedings of the Association since its organization I was surprised to find that there had been, from time to time, addresses or pa-

pers submitted on this subject by distinguished members, the first one being by the scholarly and lamented John Little Smith, at the first session in 1879, on "The Roman Law and Lawyer," and the second year of the organization of the Association a paper on almost a similar subject to my own, by the distinguished promoter and organizer of this Association, the honorable and fearless Daniel S. Troy. So I have approached the subject, as I have said, with some misgivings for fear that at least to the older members of the Association, I may have to travel somewhat over the same ground and treat the subject largely from the same stand points. Our honored President, however, having touched upon some features which I have elaborated in my paper, they will be omitted, as far as I can do so without detriment to the symmetry of the paper.

Mr. Chambers then read his paper.

*(Appendix)*

The Secretary:

I move that the Association take a recess for five minutes in order that the members may meet our distinguished guest, Judge Judd.

The motion was adopted.

The President:

Before announcing the recess I appoint the following Committee of four members to escort the orator of the occasion after the Association reconvenes: George W. Jones, John P. Tillman, W. S. Thorington, and A. H. Alston.

After a short recess the Association re-assembled.

Mr. Lawrence Cooper:

Mr. President: The hour of 12 having arrived, that being the hour for the Annual Address by our distin-



guished visitor, I move that the general order of business be suspended, and that we hear from that distinguished gentleman.

The motion was adopted.

The President:

The Committee of escort will please come forward. The Chair will respectfully request that the Chairman of the Committee present to the Association the distinguished orator chosen for this occasion.

Mr. Geo. W. Jones:

Mr. President, Ladies and Gentlemen: I learned several years ago that if a man wished to popularize himself in introducing a speaker, he should say nothing. But even if I had no scruples on that subject, I am sure I could not do this occasion justice. I therefore simply desire to say that it is a pleasure, and I esteem it an honor, to have the privilege of introducing to you one of the most distinguished jurists of the South, the Honorable John W. Judd of Tennessee.

Hon. John W. Judd:

I desire to express to the officers and members of this Association my thanks for this opportunity to address you, and also for the compliment implied in the request, and to express the hope that the paper which I have produced may, in some measure, meet your just expectations.

Judge Judd then delivered his address.

*(Appendix)*

Mr. Weakley:

Mr. President: I move that the thanks of this Association be tendered to the Hon. John W. Judd for his most in-

teresting and instructive address, and that he be elected an honorary member of this Association.

Motion adopted by a rising vote.

The President:

I desire to announce the following committee to nominate officers for the ensuing year: John P. Tillman, John V. Smith, Jos. H. Nathan, George H. Parker, C. R. Bricken.

Hon. W. H. Thomas:

Mr. President: There is one other paper that I see is on the order of business for this morning, but as the hour is late I move that the paper by Mr. Armstead Brown be postponed until tomorrow morning, and that it be made the first order of business,

The President:

How about this afternoon?

Judge Thomas:

Mr. President: I think papers should be read at a morning session. It is only fair to a gentleman put down on the programme for a morning session, and who has prepared a paper, that it be read at a morning session. Reports of committees and business matters can be transacted at other times and should be. With that view I make this motion.

The motion was adopted.

Mr. Hausman:

Mr. President: I have a resolution that I would like to introduce, and ask that it be made a special order of business for to-morrow at 11 o'clock:

"Resolved, That the Alabama State Bar Association declares its approval of the establishment of a Court for Juvenile Offenders, and that the Committee on Legislation

be and they are hereby directed to prepare the necessary Act and to take appropriate steps to secure the passage thereof."

The motion was adopted.

The Association, on motion of Mr. Lull, adjourned until 4 P. M.

### AFTERNOON SESSION.

The Association met pursuant to adjournment.

The President:

Gentlemen of the Association: The next order of business is the report of the Committee on Judicial Administration and Remedial Procedure by the Chairman, Hon. A. A. Evans.

The Secretary:

Mr. President: Judge Evans, the chairman of the committee has not sent me his report, and I do not see him present. I move that the report be passed.

The motion was adopted.

The President:

The next order of business is report of the Committee on Legal Education and Admission to the Bar, by the Chairman, W. B. Oliver, Esq.

The Secretary:

Mr. President: I do not see Mr. Oliver present, and he has not furnished me with his report. I move that the report be passed.

The motion was adopted.

The President:

The next order of business is report of committee on Correspondence by the Chairman, Hon. F. G. Bromberg.

Mr. Bromberg then read his report.

(*Appendix.*)

On motion the report was received and filed.

The Secretary:

Mr. President: I move that Hons. R. T. Simpson, N. D. Denson and J. C. Anderson be elected honorary members of the Association. They are judges of the Supreme Court. The other judges of the Supreme Court are honorary members, and while two of these gentlemen are active members, they are now judges of our highest court, and I move that they be elected honorary members of this Association.

Motion adopted.

On motion, the Association adjourned to meet at Jackson's Lake on July 1st, at 11 o'clock A. M.

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JACKSON'S LAKE, Saturday, July 1st, 1905.

The Association met at 11 o' clock, pursuant to adjournment.

The President:

The order of business for this morning calls for a report of the Committee on Legislation by the Chairman, Alex. T. London, Esq.

The Secretary:

Mr. President: I found on my table last evening a package addressed to me in the handwriting of Mr. London. It contained his report, which he asked me to read to the Association today in the event he was not present.

The President:

The Secretary will read the report.

The Secretary then read the report.

*(Appendix)*

On motion the report was received and filed.

Mr. Harrison:

Mr. President: The effect of the motion which has just been adopted is to receive and have printed in the proceedings. It seems to me that it should be acted on by the Association, either concurred in or not concurred in. There are recommendations in it. I want to bring the question before the Association, and I therefore move that we concur in that report.

The President:

You move to call up the motion, and move that as an amendment to it?

Mr. Harrison:

Yes, to concur in the report.

The motion was adopted.

The President:

The next order of business is a paper by Lawrence Cooper, Esq., on "Our Railroad Commission as a Political Factor."

Mr. Cooper then read his paper.

*(Appendix)*

The President:

The next in order on the programme of to-day is a paper by Emmet O'Neal, Esq., on "The Power of Congress to reduce Representation in the House of Representatives and in the Electoral College."

Mr. O'Neal then read his paper.

*(Appendix)*

The President:

The next paper in order of business is by Mr. Armstead Brown, on "Alabama's New Corporation Law."

Mr. Brown then read his paper.

*(Appendix)*

The President:

On yesterday the following resolution was made a special order for to-day: "Resolved, That the Alabama State Bar Association declares its approval of the establishment of a Court for Juvenile Offenders, and that the Committee on Legislation be and they are hereby directed to prepare the necessary Act and to take appropriate steps to secure the passage thereof."

Mr. Hausman:

Mr. President: We have this morning heard matters of such momentous importance as "Railroads" and Corporation Law," that the subject matter of this resolution would seem, at first blush,—pertaining as it does to children—to shrink into insignificance. And yet, when we consider that the frame work of our social structure is ultimately based upon these growing children; when we consider that the influence that they inevitably afford as good or bad citizens of a community must affect all the interests of their community; we readily understand that the resolution is not of such minor importance as it would at first seem. This resolution I was requested to introduce by some of the Women's Clubs, from whom, in all the States of the Union, the Juvenile Court has originally received its impetus, and to my mind it is one of the wisest, one of the most efficient, one of the most salutary laws that can be enacted into a state government. The Decalogue may have exerted a mighty influence upon civilization, Greece and Rome in turn may have played an important part in the march of progressive advancement, The Justinian Code, the Code Napoleon, the Magna Charta of England—all these are important factors in the

development of jurisprudence. But it was left for America, "greedy, avaricious, sensuous America," though it has been called, to develop what, to my mind, is the sublimation of all laws—the law that deals with children, laws that take into consideration the very cause of crime, and by studying that cause minimize and reduce it. This is the province of the Juvenile Court. It has been asserted that the American Nation is not a paternal government, but as had been said in opposition to this statement, we must soon recognize the fact that no man has the inalienable right to convert his home into a normal school for crime, and that where this has been done, it is the duty of the State to do what it can to prevent this. Crime is largely the result of two forces, environment and heredity, and we must not longer suppose that the child born of criminal parents, and reared among criminal environments, will grow up the same law-abiding, the same influential and the same helpful citizen as the child born of parents whose inheritances are such that they are law-abiding and whose environments are flourishing and beneficent. And yet, until crime has been actually committed, we take no more notice of the one than we do of the other. We presume that each will be equally as good a citizen as the other until the crime has been actually committed. The place that sanitation has taken in the scientific world may be compared to the Juvenile Court in the judicial. To-day we no longer allow disease to spread and affect all those with whom it may come in contact, but safe guards in the way of sanitation are thrown around, not only to protect the people from the insidious effects of the disease but by separating them, prevent its spread. And so with our criminal law, if we find that as inevitably follows, children born of criminal parents and brought up among criminal environments must necessarily become criminal, then I say it is the duty of the State to come in, and just as

the sanitation department of the State will segregate them and separate them; so must the judicial department of the State, separate and segregate. The object of this court is not to punish, it is to prevent. It sifts crime to its first basis; it examines and ascertains the cause of crime, and it does what it can to prevent the dissemination of that cause. This is the ultimate idea under which the juvenile court was formed and called into being, and this is the idea that I would impress upon you to-day.

The movement and its cause I shall not enter into, but the results, and they are the most flattering that could be imagined, as has been shown by the adoption of the juvenile court into more than twenty-five States, are what we should consider. In every State where I have examined the law, and where I have examined the results, they are even more gratifying than the promoters had hoped. In the first place, by the establishment of the probation system, and this is an essential adjunct of the juvenile court, surveillance is had over the child from the first offense. He is not necessarily taken from his home; his family is not necessarily deprived of his labors and of his energies, but the probation officer investigates that family, investigates to ascertain the influences, and tries to bring about a correction of those influences, and thus not only saves the child to the family, not only tends to rehabilitate the family itself, but above all rescues from crime some of those who would inevitably fall within its ranks. The probation officer tends not only to render the family less troublesome to humanity, but to save the child itself. For these reasons the juvenile court would be an economic gain, expensive as it may be in its incipiency. When we realize the enormous cost of the courts, when we see daily the tremendous depths into which some children sink, merely because they have not thrown around them the safe guard to which they are entitled, when we see the criminal ranks filled with those, who, had they been protected from the



first effects and received the right influence, might have been saved, when we see all these things around and about us, I say it becomes manifestly necessary that Alabama should follow her sister States and adopt such a law; and even though at first expensive, the result achieved is all important and will more than compensate the cost. And now for a few statistics: During the year 1900—and the fact might seem alarming—during the year 1900, from statistics I have been able to gather from Government reports, the appalling sum of six hundred million dollars was expended on the administration of our criminal courts. This amount for protecting the criminal, for providing for him, for maintaining him and for convicting him. During the same year the amount of one hundred and sixty-five million dollars was expended for education. One hundred and sixty-five millions for education, six hundred millions for maintaining and convicting the criminals! Contrast the figures! The per capita of the criminal amounted to six thousand dollars for that year, and the per capita for education amounted to the paltry sum of twelve dollars and fifty cents. In other words, society pays twelve dollars and fifty cents for the education of its law-abiding, and six thousand dollars for the conviction of its offensive citizen. If these questions of economics are to enter into consideration, I cite you these figures. But questions of economics, while at times they can be regarded, there are higher moral, social and intellectual questions that must enter into consideration, and even though it may not appear at first blush that from an economic point this can be done, yet from a question of these higher considerations, it can be done, it must be done. It is the duty of the State to do it. I do not appeal to you as a sentimentalist. I put the question to you as a question of reason, knowing you to be men of intelligence and conservatism, and I say to you it is now up to us; to us who represent the law element of the State; to us who are

supposed to be the highest embodiment of those features; it rests upon us to take the initiative in carrying this into effect, and with the instrumentalities that will be offered us, it rests with us to relieve the fair name of Alabama, to relieve the growing childhood from the degradation and from the destitution into which they sink. And so in the name of the State of Alabama, and in the name of this fair childhood growing into manhood, and in the name of the law, and in the name of love, and in the name of humanity, I ask the adoption of this resolution.

Mr. W. W. Pearson:

Mr. President: I am in hearty accord with the sentiments expressed by our brother Hausman. I wish to ask if the desired thing cannot be obtained by the laws that we now have if we had the money to support the institution which we now have. As I understand it, we have at Birmingham a place at which just such children as he has mentioned can be cared for and maintained, of course before they are charged with crime in some instances, but the fact stares us in the face that the good women who are in charge of this school have not sufficient money to care for the children who are sent to that place. Would it not be wise for us, for this Association, to appoint a committee to look into this matter, and after investigation, make a report back to the Association at its next meeting. There is an establishment at Birmingham which is doing a great amount of good, and it seems to me that it, in a measure, fulfils the desired end, the trouble is the people who are running that school have not money to support it.

Hon. W. H. Thomas:

Mr. President: May I suggest a word to the remarks made by Mr. Hausman on this important subject. I agree with the spirit of his resolution, but not with its wording, for I believe we have only about one hundred and

twenty-five little negroes and sixty juvenile whites who are convicts, state or county, and a separate court is not necessary to meet the demands of humanity for so small a number scattered over the whole state. If a thorough investigation of this important subject be had, and legislation extending the power of the several existing courts and amending the criminal law, and providing further that the little negro child as well as white, who is about to go into crime or who of tender age is detected in crime, be given at least his chance in the reformatory. That is a great institution in Birmingham, but do you know it is not for the little white girls, nor for the little negro boy or girl, but only for white boys. I have had the opportunity to observe some of the good work they do, though it is unfortunately a private institution depending on donations and such appropriations as they may secure from the State or from time to time from the several counties. I did not know until I commenced to commit children there that the law gives the right to the court to commit a male white child under certain designated conditions, at the same time, giving the managing board the right to admit only such children as they see fit. And it is not clear who pays the expenses of the transportation and court costs of the investigation and committal in some cases. It does seem to me that the State of Alabama could and should provide some sort of system that is comprehensive, embracing all juvenile offenders, boy or girl, white or black. They are entitled to that consideration and that protection at the hands of the State. He who administers the criminal law is not long in finding that the white and black child of a very tender age is too often apprehended in crime and is ground through the courts, I fear, in a way that should touch the heart. Pardon me, to tell just this. Two little negroes were tried and convicted, their records were bad, they had not a probation officer to look after them to keep them

from crime, or at least to guide; after hearing from those in a position to know the history of the two boys, I gave them respective sentences as was required by the statute. A little while after the expiration of the sentence of one of them, he was arrested again under like charge, and on his conviction the court asked him what had become of little Billy, the other boy sentenced with him at a former term. He said, "They tuk and shot him," "For what?" "Bekase he run'd away," was the reply. I don't know whether they shot him or not, but that's what the boy said. This I do know, those boys should have been sent to a reformatory and not to hard labor or the penitentiary. I disliked to sentence the little boys; I had to do it; the law gave me no power of indeterminate sentence; no probation officer, and the boy was an offender that should not be allowed to go unpunished. The pity was we had no enlarged powers as to juvenile offenders, now sanctioned and adopted in many States of this Union and in England. I do not think we can have a separate juvenile court for the whole State; I do not think the conditions throughout the State will admit it, but do believe there is a crying necessity for an act along the line of reformatories for all juvenile offenders of both sexes, and that such institutions be under the management of the State, and I do believe there should be such power of indeterminate sentence extended in a certain class of cases giving to trial courts some discretion like that that is exercised by such judges as Judge Jones of the U. S. Court when the ends of justice may dictate. This is not a sentimental question; it is a question of great vital importance that lies at the heart of a great people, and an enlightened public conscience. I agree with Mr. Hausman in what he has said, and the spirit of his resolution, and that this Association could not better expend its time than by giving a proper consideration along the lines he suggests.

Mr. Blakey:

Mr. President: I agree with Judge Thomas in his idea that this matter be given proper consideration by this Association, and it seems to me that the best way for this Association to give the matter proper consideration is by the appointment of a committee to draft suitable resolutions or suitable acts to be recommended by this Association to the Legislature carrying out the idea of the prevention of crime among the children. I move, as a substitute to this resolution: That the President appoint a committee to give this matter full and careful consideration and report to the next meeting of this Association some suitable resolution or Act as in their judgment may be advisable, to be acted upon by this Association, so that the matter may be placed before the Legislature in some tangible form. We hold another meeting of this Association before the next meeting of the Legislature, and I think we would be in better shape then, we would then be recommending legislation to the Legislature on other subjects, and I think we would be in better shape then to recommend legislation along this line, and I move as a substitute to this resolution: That the President appoint a committee to consider the whole matter and report back to the Association at its next meeting.

The President:

Permit the chair to ask what number on committee?

Mr. Blakey; Such number as the chair would think would be sufficient, I would suggest probably a committee of three or five would be large enough, but that matter be left to the discretion of the chair.

Mr. W. W. Pearson: I second the motion.

Mr. Hausman:

Mr. President: I have heard the objection, or objec-

tions, and I really cannot see their force. The resolution is perfectly harmless; it does not provide for any separate court, white or black, simply says enactment of general law. That, it seems to me, would meet the objection of Judge Thomas for whose opinion I have the highest regard, knowing that he has given some thought along this line of work.

Judge Thomas:

Mr. President: I think I did not make myself plain with reference to courts for whites and blacks, but for the reason that there is no necessity for a separate court for the children at all, that you have plenty of courts and plenty of judges, the only thing you want is a system that is expansive and where the courts hands are not tied.

Mr. Hausman:

Mr. President: Under the adoption of the report of the Committee on Legislation this morning, any proposed legislation would be handed to that committee in the shape of a draft of such Act as proposed to draw, or to have enacted, and that be reported back to this Association next year for the purpose of taking definite action on it. If we appoint a committee here to-day for the purpose of considering this resolution, that committee cannot report until the next meeting of the Bar Association and then it will go to the Committee on Legislation, probably too late to be acted on at the coming session of the Legislature. There can be no harm by a draft of a bill being referred to the committee, and I will add that a further attempt will be made to get the juvenile court through, even though the Bar Association does not act. But it would aid very materially in getting it passed to have some tangible suggestion come from the Bar Association. The money that will be necessary will, we are sure, not be forthcoming from the Legislature at the first meeting.

We do not expect it. It has not been done in other States. It simply enacts a law for juvenile offenders without giving any support in money. Then, through private subscriptions, funds are raised for the purpose of appointing probation officers where necessary, detention houses where necessary. In the course of four or five years, realizing the necessity of it, the State will see as a matter of economics, the advisability of coming to its assistance. Such has been the result in other States. The city of Chicago undertook to carry it out without a single dollar appropriated by the State of Illinois. To be frank, this is the course anticipated to be taken by the Alabama Legislature. The desire is merely to get the matter legalized, not act without constituted authority, because even if to-day we had the money to put into effect the probation system, a writ of habeas corpus would at any time lie, and there would be no constituted authority, even if we had the funds. What we want is constituted authority to declare that Alabama law, and then relying on the manhood and womanhood of the State of Alabama, and realizing the necessity of it, that the law will carry itself and means be at hand to enforce them.

Mr. Terry Richardson:

Mr. President: I shall have to support the motion of my friend, and the suggestion of Judge Thomas. I don't know what they do in Chicago, but I do know in Alabama when the Circuit Judge and the Solicitor, and I am sure there are none better than we have in this State, find an unfortunate child whose conduct or misconduct has been such as to warrant it, they have the right and power to send them to a reformatory. I have sufficient confidence in the integrity of our solicitors and circuit judges to believe and to know that when a child ought to be sent to a reformatory, that is the place they will be sent. The only trouble, as I see it now, is that the reformatory is not

receiving enough money to take care of the bad boys in Alabama, negroes and white folks. I will second the motion made by my friend Mr. Blakey, because when the judges and solicitors discuss the situation, the conduct of a boy as to whether he should be sent to the penitentiary or to the reformatory, I am always willing to be governed and guided by their determination without a juvenile court, for the supreme court has already said we have too many courts.

Mr. Wood:

Mr. President: It occurs to me that Mr. Blakey's proposition to raise an additional committee to attend to matters which are already attended to by a Standing Committee of this Association is an error, and I hope that he will accept the suggestion that this resolution be referred to the regular Legislative Committee of this Association,

Mr. Blakey:

That is satisfactory.

Mr. Bromberg: Was not that the original resolution?

The Secretary:

No, sir.

Mr. Wood:

To a special committee, and Mr. Blakey's amendment was to raise a new committee. I suggest that he change the resolution that it be referred to the regular standing legislative committee.

Mr. Hausman:

The resolution is that the Association voice its approval.

Mr. Wood: I understood Mr. Blakey had accepted the suggestion without expressing the view of establishing a juvenile court, that the whole matter be submitted to the



legislative committee of this Association without endorsement.

Mr. Lee H. Weil:

Mr. President: This is a resolution offered to the Association to provide for the creation of a court for juvenile offenders, and an amendment that the whole matter be referred to the general committee on Legislation. The question is whether or not under such a reference that committee would have power to refer back to this Association a resolution not creating a juvenile court but recommending an appropriation by the State to enable courts as now organized to sentence to proper reformatory schools.

Mr. Blakey:

Mr. President: My original motion to which Mr. Wood suggested amendment, was that instead of referring to a special committee, it be referred to the regular legislative committee to report back to this Association such legislation as in their judgment was necessary, not the question of reporting back a special court, but such legislation as in their judgment is necessary.

Mr. Lee H. Weil:

Mr. President: If such is the case, the amendment offered by Mr. Blakey and amended by Mr. Wood has my hearty approval. I believe that this State should have a place for juvenile offenders, where they could and should be received. I was surprised to hear Judge Thomas say that the only institution of this kind to which the court had a right to sentence prisoners, is one to which the officers of the institution had the right to refuse admittance.

Judge Thomas:

For male whites only.

Mr. Lee H. Weil:

Mr. President: I think we should have reform institutions in this State to which every juvenile offender could be sent, where the court thinks that the best interests of that offender and of the State would be conserved. That the State should provide such schools. If this resolution was to the effect that the State provide appropriation sufficient to secure these schools for juvenile offenders, then I would be heartily in favor and accord with the resolution offered by Mr. Hausman. I am opposed to the creation of any more courts. I think we have sufficient courts, and as suggested by Mr. Richardson the courts are of sufficient ability and honesty to know where to sentence prisoners whether grown men or children. But the courts, after sentencing the prisoners, are met with the proposition we have no money or appropriation to receive the children, or support them in the reformatory school, therefore they must be sent to the penitentiary. I think this a glaring defect in the system of jurisprudence in Alabama which should be remedied. If the resolution authorized the Legislative Committee to prepare an Act to provide by the State an appropriation sufficient to support reformatory schools which may be found necessary in this State, I would be in hearty accord, and do all in my power to have it passed.

Mr. Hausman:

Mr. President: I think there is a great misapprehension as to the innocent purpose of that resolution. It is not the purpose to add any more new courts; the judge of the circuit court or of the city court, as may be designated, will be the judge of this court, and the only difference is that he will hold certain days in the week for juvenile offenders to avoid intermingling with the old and hardened criminal.

The idea is to differentiate the young and unsophisticated

criminal, who often is not criminal but a delinquent, to keep him from learning ways that would eventually make him a hardened criminal. Therefore there is no necessity for the establishment of a new court, but that the judge shall be delegated to hold certain days in the week for the particular purpose of trying juvenile offenders.

In order to get a sentiment crystallized throughout the State, I shall ask very earnestly that the Bar Association give its support, if it consistently can, to this movement, because, as I said before, I believe that the sympathy and support of such an Association will aid us very materially in securing this crystallizing. And to eliminate such objections as have been urged, I will suggest that the resolution read something like this:

Resolved, That the Alabama State Bar Association declares its approval of the establishment of a Juvenile Court, and that the matter be referred to the Committee on Legislation for such other action as it may take, to be reported back to this Association at its next meeting.

The President:

Will the gentleman accept that amendment?

Mr. Blakey:

Mr. President: That commits this Association to the establishment of a Juvenile Court,—what I object to.

Mr. O'Neal:

Mr. President: I move to lay the amendment to the original resolution on the table.

The President:

The question recurs to lay the substitute on the table.

Mr. Mullins:

Mr. President: We do not understand exactly what is the motion.

The President:

The motion of Mr. O'Neal is to lay the substitute offered by Mr. Blakey for Mr. Hausman's resolution, which was before the Association to-day, on the table. Now, gentlemen, are you ready for the question? Those in favor of the adoption of the motion by Mr. O'Neal will signify by saying aye, contrary opinion, say no. The ayes have it.

Mr. Wood:

Mr. President, I call for division.

The President:

Division called for; all in favor of adoption of Mr. O'Neal's resolution will signify by rising.

Mr. Bricken:

Point of order, that the result has been announced by the chairman.

The President:

The point of order is sustained; and the question recurs on the adoption of this resolution as amended by Mr. Hausman.

Mr. Mullins:

I would ask that the amendment as offered by Mr. Hausman be read.

The resolution of Mr. Hausman as amended was read.

Mr. Wood:

I move that the resolution be laid upon the table.

The President:

You have heard the motion to lay upon the table. As many as favor that will say aye, contrary opinion say no. The noes have it; and the question recurs upon the adoption of the resolution by Mr. Hausman as read to the Asso-

ciation. As many as are in favor of the adoption of the resolution signify by saying aye, contrary opinion saying no. The ayes have it.

Mr. Whitson:

I desire to offer the following resolution:

**WHEREAS**, The necessity for an additional judge for the Northern and Middle Districts of Alabama is imperative as is clearly demonstrated in the letter of Judge Thomas G. Jones to the President of this Association of 29th ultimo; therefore, be it

*Resolved, by this Association*, That we concur in and endorse the statements and suggestions contained in Judge Jones' letter, and earnestly request our Senators and Representatives in Congress to use their best efforts to procure the passage of an Act of Congress providing for an additional judge of the District Court of the United States for the Northern and Middle districts of Alabama.

*Resolved further*, That the Secretary of the Association forward a copy of this resolution, together with a copy of the said letter, to each of the Senators and Representatives in Congress from Alabama, for their consideration.

Mr. Whitson:

Mr. President: It is not necessary to say anything in regard to the necessity for an additional judge. The great mass of bankruptcy business in that court, the great number of damage suits in that court, has shown beyond all question, that it is impossible for one judge to administer the duties of the office. The delay occasioned amounts to a denial of justice. I agree with Judge Jones that the only practical relief that can be obtained is by an Act of Congress for an Associate Judge. That system has acted well in Birmingham in courts. There would not arise questions of dividing or creating a new district; there would be trouble as to other officers if a new district was created, District Attorney and things of that sort, and we could not afford to imperil the necessity of obtaining an additional judge for the District Court by undertaking to carve a new

District out of present districts. It does seem to me the suggestions contained in Judge Jones' letter are the only practical solution of the question.

Mr. Nathan:

Mr. President: I am somewhat acquainted with the subject matter of the resolution offered by Mr. Whitson, and after thinking over the matter for the past twenty-four hours I heartily endorse the suggestions made by Judge Jones, and it seems to me the only probable solution, and the only probable relief that we will have of the congested condition of the United States Court for the Northern and Middle District of Alabama.

Senator Pettus:

Mr. President: This Association ought to know that this very question has been very much considered in Congress, and there is great difference of opinion among the members of the House of Representatives. An Associate Justice or Judge of the District Court, is not exactly in line with what has been heretofore done. They sometimes add another judge to a district—but I do not intend to enter into a discussion of this subject, that is not my purpose. It is evident that there is one court in this State that needs relief in any way that it can be obtained. In Birmingham there is a denial of justice by reason of the accumulation of business in the United States Court. Many corporations doing business in Alabama are foreign corporations. If sued, there is a removal into the United States Court, and there the case dies, or remains inanimate for an indefinite number of years. That ought to be remedied in some way. I did not arise for the purpose of discussing how it ought to be done. I know there is a difference of opinion and there has been a quarrel over that subject in the House of Representatives for the last ten or fifteen years. The State is curiously divided in

reference to districts, and in that way division has arisen. This matter ought to be maturely considered. There are members of the bar here from Birmingham who ought to let us know what they want; it is Birmingham needs relief more than anything else because the business is clogged there and cannot be disposed of. That is all that I have to say, Mr. President. I want to have the matter thoroughly considered before it is passed on.

Mr. Whitson:

I desire to amend the resolution in one particular; instead of the word "associate" I will ask to put the word "additional" judge. I understand that it was an additional judge which Judge Jones referred to in his letter. I did not have the letter before me when I offered the resolution. We all appreciate the force of what Senator Pettus says, and I have no doubt that there are differences in Congress among most of the representatives. It is very natural that each representative should desire to have matters so arranged as to bring his district into a new judicial district. Differences arise among them from various reasons, but when we consider that our representatives in Congress from Alabama, and our Senators, are not members of the dominant party in Congress, and when we come to consider that in carving out a new district, in the State of Alabama, that necessarily, we would have to antagonize other interests and those who are filling offices in the present districts, whom we have no desire to antagonize, and which are, so far as we are concerned, satisfactorily filled now, and the only object and purpose is to obtain relief in the trial of cases, it seems to me that this Association should get the best that is obtainable. Apparently it has been difficult to obtain relief and if we undertake to carve out a new district and have a judge appointed for that district, it will probably result in the defeat of the measure. Of course I do not know what the gentlemen from Birmingham, who

are here, may desire. It seems to me by the creation of an additional judge we would accomplish the same purpose exactly, and he could not only discharge the duties in one district, for instance the Northern District, but, when occasion arises, in the Middle District also, as is done by the Federal Judges exchanging districts, and I believe relief could be obtained in that way, and that it is the only practicable mode by which it can be obtained.

Hon. Thos. G. Jones:

Mr. President: I do not deem it out of place, to say that I have no personal wish to interpose against any practical remedy which may be suggested to relieve the congestion of the dockets in the two districts. My reason for the plan suggested in the letter was this: if we disturb the existing districts by attempting to create a new district out of parts of them, we disarrange the old districts and create much confusion. We have not only to deal with the judge, but will have to rearrange the duties of the clerks, marshals and district attorney's office. Litigants in the Northern District are very tired of having to come to Montgomery about six months in the year to get orders in chambers. Litigants in the Middle District also object to the necessity of having to go to Birmingham and Huntsville to get orders during six months in the year. The duties of the judge are such that he is absent from each district about one-half of the year. Speaking approximately of the litigation at Birmingham, I may say that it amounts to ~~sixty-five~~ per cent. of the combined business of both districts. If all this be put upon the new judge for the Northern District, it would be a burden which he could not bear. He cannot hold all the courts in Birmingham, Huntsville, Anniston and Tuscaloosa, and take care of the business as it arises. He would undoubtedly have more than his fair share of the work in the two districts. If it is sought to remedy this inequality by some



territorial arrangement, then we are confronted with the question of how that territory shall be arranged. It would not do to cut the Northern District into parts, leaving part of it to exist as the Northern District. If this were attempted, what disposition would be made of the present judge of the two districts? Would it be proper and right to put him entirely out of Birmingham, or give him a shoe-string district extending from Huntsville and Anniston down to Montgomery? If that were attempted, could the business be fairly divided? I think not, and I do not favor that mode of attempting to adjust the difficulty. Besides, that would require a change in the territorial jurisdiction of the clerks', marshals' and district attorneys' offices, and the appointment of new officers for the new district, and possibly a readjustment of salaries. This would entail new difficulties, perhaps cause the proposition to meet with opposition in the Judiciary Committee, and from the Department of Justice to which such matters are generally referred. When we come to designate the boundaries of the new district, we find great differences of opinion among the people and the bar, and it is highly probable that opposition to changes, and differences among our delegation in Congress on such questions, might defeat any bill. Some have gone so far as to suggest a rearrangement of the Southern and Middle Districts. That would not meet with the approval of the members of the bar, nor of the judges concerned. Judge Toulmin, it is just to say, has given all the spare time he could to holding courts in the Northern District. It seems to me, therefore, that the wisest plan, the one to which there can be the least objection, and which is the most practicable and feasible, is, to ask Congress to give us an additional judge to reside in the Northern District, and then let him and the judge residing in the Middle District have equal powers in each district, and allow them to divide the business out between themselves. Such a disposition has been made for the

dispatch of business in single districts in New York and elsewhere, and is found to work well. Besides, in event of the sickness of one of the judges, his absence from the State, or disqualification in particular cases, litigants in each district would always have a judge to act.

Speaking approximately, I may say that at the present time there are probably 400 litigated cases at law and in equity in the Northern District alone. Every lawyer knows that an ordinary damage suit is not tried under two days, and some of them take a week. It would require at least 800 days of judicial labor, under the most favorable circumstances, to dispose of the business of the common law and equity dockets, for which we now have only 365 days in the year—if there were no Sundays, and no time spent in travel to reach court and the judge never had any vacation. Then there is a heavy criminal docket in the Northern District. Alabama, I believe, is about the fourth State in the Union in the number of cases in bankruptcy, and the applications for receiverships, objections to discharges, and appeals from referees are interminable and innumerable. A similar condition of things, though to a less degree, owing to the less per cent. of litigation there, is true of the Middle District. It is absolutely impossible for any one man, no matter what his physical and mental powers, to begin to dispatch the amount of business, and if the present arrangement continues, it will only result in a continual clogging of the docket, and amount to an absolute denial of justice.

I may mention the fact, because it is known to many, that during the last four years I have been absent from the State but three times, the whole not amounting to a month's time. One time I was absent on account of the illness of a member of my family, and twice on official business. I frequently go to work at six in the morning and work until ten or twelve at night. I have heard in the last four years

over three hundred cases at night. The correspondence of the office is extremely burdensome, and during sessions of the court it is impossible to keep up with it. We have several hundred prisoners "on parole," so to speak, moonshiners, who are paying fines on the installment plan, but trying to do better, and generally they do do better, and these parties are constantly writing the judge asking for extension of time, and about their fines. Many of the public do not understand the judge's functions in bankruptcy matters, and frequently claims are sent to him by mail, and still more frequently letters come daily asking for information about dividends, and the status of particular cases, with which the judge has nothing to do, unless appeals are taken to him. Owing to the great amount of territory in the two districts, the judge being necessarily absent from one of them during half of the time, members of the bar write numerous letters about the disposition of cases, setting them, etc., and there is also correspondence regarding the administrative duties of the judge, the marshals, referees, and district attorneys' offices. The official mail sometimes runs as high as fifty letters a day.

I was in Washington the first of the year and conferred with members of our delegation, and somewhat with the Department of Justice. Tennessee will soon have another judge, the creation of the office being dependent upon the agreement among the members of Congress from that State. South Carolina is seeking relief and will get it. Every one admits the absolute necessity for additional judicial force in Alabama. I know our Senator knows the difficulty as to legislation of this character, some of which he has mentioned, some of which I have mentioned, and some of which, probably, it is not proper to mention here. I think I may say, however, with confidence, that any legislation which our delegation in Congress asks, will undoubtedly pass and be approved. I am equally sure that they will accede to any solution which men on the ground who

must deal with the solution, and who know best how to remedy it, will urge. I think it proper to say I believe no one of them would insist upon any personal view he had upon the subject against the wishes of the bar of these two districts. These are the reasons for the plan suggested in my letter. It would have been easy to have agreed with some of the proposed plans which, perhaps unthoughtedly, shifted an undue burden upon some additional judge, but it would not have been honest, it would not have been fair; and, therefore, I have felt it my duty to trespass this much upon your time this morning.

Mr. Wood:

I do not consider it necessary as one member of the Birmingham bar to add anything to what has been said by Judge Jones in regard to this subject. The bar is called upon by our distinguished Senator to make a statement. I feel that Judge Jones has had this matter under consideration, and has worked out the nearest chance of relief. I think the proposition demonstrates itself, and I do not think it is necessary to make any statement in that regard.

Mr. John London:

Mr. President: I move to amend the resolution that the additional judge reside in Birmingham.

Mr. Callahan:

Mr. President: I move as a substitute for that motion that he live at Decatur.

The President:

The question before the Association is the adoption of the resolution introduced by Mr. Whitson. As many as are in favor thereof signify by saying aye, and contrary opinion by saying no. The ayes have it and the resolution is adopted.

The President:

Gentlemen of the Association, the next business is the report of the Committee on Grievances by the Chairman, Daniel Coleman, Esq.

The Secretary:

Mr. President: No report has been received.

The President:

The next order of business is a paper by Henry Fitts, Esq., on "A Comparative Study of Judicial Systems."

The Secretary:

Mr. President: I have a letter from Mr. Fitts, in which he states that by reason of illness in his family that he has not prepared his paper. I therefore move that it be passed.

The motion was adopted.

The President:

The next order of business is report of the Committee on Local Bar Associations by the Chairman, W. T. Sanders, Esq.

The Secretary:

Mr. President: I have a letter from Mr. Sanders, in which he states, that by reason of the fact that a special term of the Circuit Court has just convened in his county, that it will be impossible for him to be present. There is no report:

The President:

The next order of business is report of the Central Council of the Bar Association, passed from yesterday.

Mr. Callahan, Chairman of the Central Council, then read his report.

*(Appendix)*

On motion, the report was received and filed.

Mr. Dent:

Mr. President: I have a resolution which I desire to offer:

*Be it resolved by the Alabama State Bar Association, That By-Law 16 of said Association be amended by striking out the word "three" in the second line thereof and inserting the word "five" in lieu thereof, so that the same may read as follows:*

The offices of Secretary and Treasurer shall be filled by the Secretary, and his annual salary shall be five hundred dollars, one-half of which shall be due on the first day of May, and the other half on the first day of November in each year, but may be paid earlier or at any other time if the Executive Committee shall, in writing, so direct, but this shall be in full of all compensation to him. No other officer of the Association shall receive any salary or compensation.

Mr. Dent:

Mr. President: That resolution increases the salary of the Secretary and Treasurer from \$300 to \$500 a year, and I move the adoption of that resolution.

The resolution was adopted.

Mr. Wood:

Mr. President: I desire to offer a resolution.

*Resolved* (1), That we congratulate the West Publishing Company for having undertaken the republication of the first 98 volumes of the Alabama Reports, and having successfully issued 18 volumes of their annotated reprint.

(2). That the growing development of the State, and the increased need of the knowledge of the law, and the scarcity of the Reports, makes their efforts in this regard well worthy of commendation by this Association.

Mr. Wood:

Mr. President: I desire to state in this connection that these gentlemen have undertaken at an expenditure of a large amount of money, a republication of the Alabama Reports. It is a matter which has been urged for many years. Numbers of printing firms have been considering this publication for twenty-five years. I think it is worthy

of attention that they are going forward with vigor in this matter and intend to put them all out, and I therefore move the adoption of the resolution.

The resolution was adopted.

The President:

The next order of business is report of Committee on selection of officers for the ensuing year, of which Mr. Tillman is Chairman.

Mr. Tillman read the report of the committee as follows:

*Mr. President:*

Your Committee appointed to nominate the officers of the Association for the ensuing year beg leave to report nominations as follows;

For President—George P. Harrison.  
 1st Vice-President—Frederick G. Bromberg.  
 2nd Vice-President—Emmet O'Neal.  
 3rd Vice-President—Samuel D. Weakley.  
 4th Vice-President—W. W. Callahan.  
 5th Vice-President—Chas. P. Jones.  
 For Secretary and Treasurer—Alex Troy.

For Members of Central Council:

John London, *Chairman*,  
 Lee C. Bradley, E. K. Campbell,  
 Edward DeGraffenreid, C. C. Whitson.

For Members of Executive Committee.

Geo. W. Jones, *Chairman*,  
 R. T. Goodwyn, J. L. Holloway,  
 Lee H. Weil, Alex Troy, *Ex-officio*.

Respectfully submitted,

JOHN P. TILLMAN, *Chairman*,  
 JOS. H. NATHAN,  
 GEO. H. PARKER,  
 JOHN V. SMITH,  
 C. R. BRICKEN.

Mr. Blakey:

Mr. President: I move that the report of the Committee be received and concurred in, and that the gentlemen

named be elected officers of the Association.

The motion was adopted.

The President:

In the recent past Judge Jones has been very much interested in a matter of interest to the profession in this State, and has been invited to prepare a paper on that subject. I hope that he has it with him and will read it to the Association, or deliver it to the Secretary if he sees proper.

Hon. Thos. G. Jones:

I have the paper with me to which the President refers. It treats of a question of great importance,—whether a citizen of the United States has any immunity or right, under the Constitution of the United States, to be protected by the United States, against mob violence when in custody of State officers on accusation of crime against State laws. We have heard many papers this morning. Our time is short. I know the members desire to devote the remainder of the day to social intercourse. I therefore ask that the paper be filed and considered as read.

On motion, the paper was received and filed.

The Secretary:

Mr. President: I have a resolution that I desire to offer:

*Resolved*, That the thanks of the Alabama State Bar Association be, and they are hereby extended to the Louisville & Nashville Railroad Company, for the courtesy in giving a special train to the Association for the excursion to the Lake to-day.

The resolution was adopted.

Mr. Weakley:

Mr. President: I have a motion which I desire to offer, the stenographer can take it. I move that the Chairman of the Executive Committee be instructed by this Association to endeavor to obtain for our next meeting a special railroad rate for transportation of members who desire to



attend meetings of this Association. I know that it is usual in many instances to obtain such rates, and it seems to me that the State Bar Association ought to be entitled to a special rate of that sort, and if the proper efforts are made it can be done. I think there would be a larger attendance if we get a special rate.

The Secretary:

Mr. President: I have no objection whatever to the resolution. For several years I attempted to get special rates from the Passenger Association (all the railroad companies nearly are members of it), and invariably received notice from the Secretary of the Association that if I would state that 80 or 100, as the case might be, not less than 80, and frequently 100, members would attend the meeting, coming over the railroads of the State, that reduced rates would be given. On several occasions I obtained the reduction and had to countersign the return tickets, and not exceeding 15 or 20 were presented. I was unwilling to make a statement which I did not believe was true; I did not believe that 100 members, coming over the various railroad lines, would attend the meeting; I refused to make the statement, and the reduced rates were not obtained. Now the membership of the Association is very much larger than at that time, but I wish to state to the members why, in the last few years, I have made no effort whatever to obtain reduced rates.

The President:

Is the motion still pending?

Mr. Weakley:

Yes, but of course no criticism was intended on the Secretary, but I believe that another effort should be made at this time with a view of stimulating the attendance.

Mr. Mullins:

Mr. President: In view of the fact that it is a great day of changing rates, I suggest that effort be made to get reduced rates. The attendance now is not what it was ten years ago:

Judge Thomas:

Mr. President: I want to suggest, I may be in error, but it seems to me that they gave a special rate to the Bankers to Mobile when as many as 50 would attend.

The motion was adopted.

The President:

I have requested Senator E. W. Pettus to make a tender on the part of the Association of a present to Mr. Alexander Troy, at the expiration of twenty-six years services as Secretary and Treasurer of this Association.

Senator Pettus:

Members of the Association: Since I came into this room I have been requested to make this presentation to our honorable Secretary. I suppose I was requested as the man furthest in the past, that could recollect some things beyond twenty-five years. I do not see any other reason, because it seems to me that if I was expected to make the presentation, they ought to have given me about two weeks time to put on the flowers. Still, having been called on to perform this pleasure-giving task, I desire to say that my memory enables me to go back as far as twenty-five years in the past. I remember a man named Houston, from Limestone, who would come down here among us and preach the purest doctrine, and you all sanctioned it, and took charge of your own affairs, and after you got your own affairs regulated to suit yourselves, the lawyers rose up and formed this Association, and they elected our distinguished member there its Sec-

retary. and he has been Secretary ever since, and he has been attending to his duties with a faithfulness that has done credit to the Association and reflected honor on the old Tar Heel State, and he is not only from the Tar Heel State, but he has got tar on his heels, and has attended to the duties well. I had just as well tell the truth, it is before you all, I do not wish to conceal anything, he has attended to *all* the business of the Association for the past twenty-five years. I am not talking to strangers, but I just wanted the members of the Association to know that fact, and it is a fact. Well, brother Troy. I just want to say to you, right now—even though the bell is ringing for dinner—that if you will go on for twenty-five years more, then we will consider if we cannot do better and make you President, or something, after twenty-five years more service. I read in a book once a description of Red Jacket's speeches, and I remember that if a man has no other merit to his speech he can at least have said for it that it was short.

Mr. Troy:

Mr. President, and Gentlemen of the Alabama State Bar Association: There is no one, and there can be no one, who more keenly feels, or more fully appreciates, the esteem and respect of his fellow man than I do. This beautiful present, priceless on account of its association, is rendered, if possible, more valuable by being presented by the distinguished gentleman who has tendered it to me, a distinguished Senator from the State of Alabama, a grand, old, square block of granite,—General Edmund W. Pettus, of Dallas. We all love him, and no one in the State of Alabama mentions his name except with reverence and affection.

The Association has done me too much honor. I have done some of the work of the Association, but, if you would

ascertain the secret of its success, ask this same distinguished gentleman who has made this presentation to me, ask the accomplished Cooper, or the eloquent Harrison, or the brilliant Roulhac, or the Londons, or Tillman or Parker or Weakley, or you, or you (pointing to several members)—all of you, and you will say, that you believe that every lawyer owes a duty and an obligation to his profession, and that this duty and this obligation can be better discharged by united action rather than by individual exertion; that is what brings you here in the sweltering days of June to transact the business of the Association. The very first article in the fundamental law of this Association declares, that it was organized for the purpose of "upholding the honor of the profession." The members of the bar of the State look to the Association for that; the people of the State look to the Association for the accomplishment of that purpose, and thank Heaven, the day is at hand when they will not look in vain.

There were those at the organization of this Association --and others who have since aided in building it up—the fragrance of whose memory still permeates the air which fills the hills and valleys of Alabama. We cannot think of this Association without recalling the distinguished members who have passed away, men like Peter Hanilton, William G. Jones, John Little Smith, and Gaylord B. Clark of Mobile, William M. Brooks of Selma, Daniel S. Troy, David Clopton, Thomas H. Watts, P. T. Sayre, Henry C. Tompkins and others of Montgomery, Henry D. Clayton of Barbour, Robert C. Brickell and Leroy Pope Walker of Huntsville, and many others who have gone to their reward; men who were great lawyers, men who would have been great lawyers in any country in the palmiest days of its history, men who would have been startled and astonished at the word "commercialism" in the practice of the law, or in the attempt to get business by unworthy means. It is the memory of these men, and

the distinguished men who yet occupy positions at the bar of the State, which make it an honor to belong to the profession of the law, and should make a man feel ashamed to do an unworthy act in his profession.

As I have said, the bar of the State, and the people, look to this Association for the carrying out of the objects of its organization, and while it is young comparatively in the history of this State, we do not recognize that there is, in the bright lexicon of its youth, any such word as "fail" in its efforts. It proposes to go on with this work until the word lawyer is again respected and honored from the beautiful valley of the Tennessee to where the waters of the Gulf wash the sands at Mobile. Now, Gentlemen of the Association, I accept with sincere thanks, this token of your affection, and as Antony said that the people of Rome would take a hair of the mighty Cæsar to treasure in their memory, and dying, bequeath it as a rich legacy unto their issue, so I take this beautiful bowl, and can promise you that in the future, as in the past, I shall attempt to discharge the duties of this office in such a way as to merit your approbation. The Alabama State Bar Association has had coldness and luke-warmness where it had a right to expect sympathy and assistance, but it has weathered every storm, and it is stronger to-day than it has been at any time in its history, and it will go on in the work it set out to accomplish until it is accomplished, for, like the bright name of Marco Bozzaris, it was "not born to die."

Mr. Lawrence Cooper:

Gentlemen of the Association: I move that the thanks of this Association be tendered to Hon. Thomas R. Roulhac, for his efficient services as President, and extend to him our gratitude for the good he has done in the performance of the duties of that office. All who favor that motion will say aye.

The motion was adopted.

Mr. Roulhac:

Gentlemen of the Association: I can but return my thanks for your kind expressions, I appreciate it very highly, and nothing I have ever received is more appreciated.

On motion, recess was taken for one hour.

### AFTERNOON SESSION.

The President called the Association to order.

The Secretary:

Mr. President: On yesterday the report of the Committee on Judicial Administration and Remedial Procedure by the Chairman, Hon. A. A. Evans, was passed over until to-day. I see Judge Evans is now present.

Judge Evans:

Mr. President: The Committee has not any report to make.

Mr. Tillman:

Mr. President: I desire to move the thanks of the Association to our friend who has acted for us as Secretary and Treasurer. and also to the Central Council and members of the Executive Committee, for the efficient manner in which they have discharged their duties.

The motion was adopted.

Mr. Tillman:

Mr. President: There is one other matter. We have a member of our Association—and we had the evidence this morning of the love and respect we feel for him. In August, I believe, there will be a meeting of the American Bar Association. Ordinarily I would be opposed to pouring honors on a man, sometimes in favor of showering them a little, but I do not believe you can turn the head of the gen-

tleman I am about to speak of, and I do think if any man deserves honors at the hands of this Association, it is the gentleman to whom I am about to refer.' I know it is the duty of the incoming President to appoint delegates to the meeting of the American Bar Association, but I think it is nothing but fitting, as a further recognition of the labors, of the honest and zealous manner, the loyal manner, in which he has served this Association, and which, Mr. President, has done more, in my judgment, than the labors of any dozen or more of us in keeping the Association together in depressed times, and bringing about the gathering we have to-day, which I will say is the most successful one I have ever attended. I desire to move, Mr. President, that by the action of this Association, he be appointed a delegate in addition to those who will attend that meeting to be held in August as a representative of this Association, his expenses to be borne by the Association—that gentleman is Mr. Alex. Troy, and I do hope the Association will pass the motion.

The motion was adopted.

Mr. Troy:

Mr. President, and Gentlemen of the Association: I cannot thank you as much as I feel, for the honors that you continue to pour and shower upon me. I insist that I am not entitled to those honors. I have performed the duties required of the Secretary, and have been paid for them. It is true, from a financial standpoint, it would have been far better if I had never seen or heard of the office of Secretary of the Association, but there are certain reasons, which it is not necessary to state, why the labors performed have been in part labors of love. The Association really has honored me, I think, far beyond my deserts, even if I had served without compensation, and even if the office had been sought and I had done far more than I have done. This Association I believe is capable of accomplishing

great good not only to the profession in the State, but to the people of the entire State. I thank you very much for the resolution which has just been passed, and for the compliment intended and implied by it.

The Secretary:

Mr. President: There being no further business before the Association, I move that the Association do now adjourn *sine die*.

The President:

Before putting the motion I desire to say that if it be carried by the Association that I have the privilege, and the happy one, of delivering my office of authority to the succeeding President, whose orders hereafter you will have to obey, and to whom I hope you will give as great and cordial support as you have to me. I desire to present your incoming President—Gen. George P. Harrison.

Gen. Harrison:

Mr. President and Gentlemen of the Alabama State Bar Association: I appreciate the fact that this late hour is no time for a speech, but in accepting the honor which you have conferred upon me to-day, I desire to say that while I have had some honors conferred upon me during my life, politically, militarily and masonically, still I do appreciate more highly than any other this honor which has come unsolicited and unexpected, calling me to the position of President of this Association. Having been bred and raised a lawyer and expended all the years of my life in the practice of the profession, I have always been content to practice at the Bar, and labored in the interest of this Association, in a small way perhaps, ever since it was organized. I have never aspired to be a judge, but always aspired to be a lawyer, nor have I aspired to be your President, but since the lawyers of the State have given me the honor, I thank them from the bottom of my heart.

The Association adjourned *sine die*.



## ADDRESS

BY

**THOMAS R. ROULHAC,**

PRESIDENT OF THE ASSOCIATION.

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*Gentlemen of the Alabama State Bar Association:*

The rules of this Association require its President to make the basis of his address to you some remarks upon the public statutes passed, important decisions made and like events occurring during the past year. My labor in complying therewith has been greatly lessened by the fact that the Legislature of Alabama has not been in session since our last meeting, and that the address of my predecessor considered at length the latest proceedings of that body. In that connection, he referred to the consideration the Supreme Court was then giving and the results it had then announced upon the constitutionality and validity of some of the acts then adopted. It might now suffice to add, that since then almost all the other decisions of that court upon the other acts of that session of the Legislature have but increased the invalid list. This phase of such action has attracted much attention in the profession and throughout the State.

In the great world of our day and generation history has filled its pages with events of important and sometimes startling nature. The great war between Japan and Russia, two nations and two peoples so widely different by birth, training and race, has continued for the past year, and both on land and sea events have transpired, which not only afford a new and unexpected culmination to the

contesting armies and navies, but have also given to the world new problems of armament and equipment, and presented questions for statesmen, which will require careful consideration and prudent disposition. Success to Japan has been so far uninterrupted, and one of its certain effects has been that of arousing among the people of Russia an inclination for progress and advancement among all its classes, for individual liberty and opportunity, and for the advancement of all its classes by education and enlightenment. It is not too much to say that this cannot but be, in large part, the product of this age. The gateway of this wide territory, benighted population, and autocratic repression which has been Russia's fate so long in the past, have at last been opened to the dwellers of other lands, where individual effort has long had its field for development, whereby the public welfare of their country and the world at large has been steadily enhanced and the hand of progress could not be stayed. Contact with these elements on every side must at last awaken the best activity of those who had been previously confined in narrow bounds, and who when the truth was at last realized by them would seek the same freedom and opportunity which other nations had possessed.

The march of such events in Russia cannot be stayed. Its rulers, if wise, will render all assistance in their power to such a spirit of advancement, and will endeavor to bring about the imminent changes in character and fortune of their fellow countrymen rather than by violence and oppression retard the march of progress.

All nations of the earth have watched this conflict with the deepest interest. Lessons have been taught in every branch and department of warfare. New sciences have been brought into execution, and methods which skill and labor have pondered and perfected have performed feats beyond expectation and with a certainty which ingenuity

was not thought to be able to devise. In one thing connected with this subject the American citizen cannot fail to be regarded and recorded as a most important factor. Those instrumentalities which have proved most effective had their origin in the late civil war of this union. The battle at Hampton Roads between the Virginia, the old Merrimac, and the Monitor, invented by Ericsson, commenced in history the use of iron-clad ships in naval warfare. That time has afforded improvement in all of the parts of these structures, and that they have grown and been added to in every new form of naval architecture is apparent to every observer; but the fact remains that American energy, invention and daring furnished the first example of this miraculous struggle over the waves. Submarine boats were both invented and tested in the harbors of the Southern States in that stupendous struggle. Success did not then always attend such exertions; but the spirit which begot it and the spirit which undertook it belong to the Southerner and to the American citizen. Torpedoes were first used with results of any moment both on land and under the water in our own section of the country. The rifle cannon, the repeating small arms and the breech-loading artillery, sending far more missiles in a moment's time at the most critical juncture between the fearless and daring armies, recorded not only their deeds but their creation during our civil war. Not only so, but the ambulance corps and the litter bearers kept pace with the skillful surgeon along the lines of battle for the first time in that conflict. Surgery, with its zeal and daring, restored to health and to life many a shattered form and suspended existence. The use of anaesthetics not only contributed to their operations and eased the wound-tortured warrior, and assisted in the mastery of disease, but many of its kind and much of its power derived existence and use from the American brain, and were applied during that period in a way which had never been thought

possible. As already mentioned, all these agencies have since that time been improved and advanced; but back of it all the credit belonging to them and the blessings bestowed thereby belong to the history and the fearlessness of the American soldier in his great contest for supremacy. All was not accomplished for which many of us struggled and the end was different from what many of our people prayed for, but among the other blessings besides those of a restored union, which time has demonstrated and will in future more brilliantly typify, must stand the renown and the honor of such great progress in the march of events. So defeat may result in blessing to the Russian people, and they may realize that Providence has its purpose in every happening in life, when its people realize that freedom has its reward in things performed and in the hope of human toil, and when the evils of serfdom are overcome and destroyed, as a garment which is threadbare and has done its work. Another source of pride as well as gratification to our people must be that at least peace to these combatants holds out its promise, and that the principal attempts and most notable diplomacy to bring this about was on the part of this country and the executive of this nation. For him it may be said that three great principles have been faithfully and earnestly pursued, and that they have produced results which have received the warmest approval of our citizens.

First, it may be said that for this he has bent every energy to bring it about; that in this country, without regard to the points of the compass, every citizen should have pride in the Americanism which belongs to him by virtue of his citizenship alone, and so belonged from whichever direction he came or to whatever class or rank he belonged. Sectionalism has had no place or favor there, and only the determination and the effort to do what is right for the individual and our country has received approval.

Again, he has demanded the just observance by all aggregates of wealth and corporate power in the hands of the few of the rights of all others of our people to have a fair deal and receive its reward for manly labor. Finally, his exertion has been constant that no efforts should be omitted to bring about peace throughout the world, and of a kind that all honest nations could accept and practice. Surely it has not detracted from American reputation that the administration of this country has taken the initiative in working treaties in foreign countries however distant and leading to a cessation of a bloody and distressing conflict. It has excited the admiration and concurrence of others of enlightened nations, and obtains the cordial commendation of our own people. Not the least of our triumphs has been, that diplomacy in America means, and means only, clean cut and honest efforts to secure the proper ends.

While heretofore the profession of a diplomatist had been thought to exact every preparation for concealment, deceit and undue advantage, with our people it stands alone for a pure and upright effort to do and to administer justice to and from ourselves and other nations. What a revelation has this been! What a line of conduct it is, of which no strong and growing country nor its people need be ashamed!

Throughout the United States an unexampled prosperity still exists, and has prompted remarkable enterprise and development for the past eight years. Cities have increased and enlarged, towns have grown and changed their names into that of cities, the land has yielded abundance and blossomed like the rose, the waterways have been opened and still supply resource and wealth to all parts of our nation, lines of transportation have increased in number and all of their facilities have been multiplied and made better and better, buildings of ornament and utility have grown apace, competence has been everywhere pos-

sible, mines have been opened and profit has been derived, the desert has been converted both into an abode and a field of production, enterprise has struggled with enterprise for advancement, and, in all respects, this country has furnished an attractive field for all the efforts of man. Some great problems for careful investigation and adjudication make their appearance here, as they always will with us and everywhere. Labor and capital still have their conflicts. On the one side, evils have shown themselves as in every other calling and business. The laboring man has organized not only for the protection of himself and those who share his toil, but also that he may prevent others like him from rendering service, where he thinks it will operate to his detriment. Those who work may agree among themselves to act in concert in all particulars in which their interest is mutual; but it is widely and flagrantly hostile to the spirit of independence which is the birthright of the American citizen, that any one man or set of men may and shall say to another that he must cease his labor and see want and suffering visit those who are dependent upon him, because he would rather earn than trust to charity. The State of Alabama has a law, which was aimed at the punishment of such efforts in the name of boycotting. It was prompted by the proper spirit and demands a proper consideration by one person for another. Yet what is involved in this is not all which shows itself in the great struggle between the two elements in every population, of capital and labor. Organization cannot be controverted or overcome in any quarter. The right of unionism is both natural and fundamental, but the thoughtful man must have long since concluded, that it would not have assumed those features, which suggest the most forcible arguments against it, had not much of the power, strength, coercion and destruction, which threatened an honest man's pursuits, been lodged in and employed by the powerful corporations and combinations of

capital, which have been encouraged and tolerated both in useful development and in corrupt control of many portions of this country. Sometimes it has happened to the shame of our people, that the executive officers were put in place, courts have smiled and bowed, and legislation has been dictated by the will and influence of such corporations and their most active authorities.

Such corporations and especially railroad corporations, which transport both passengers and freight, are meeting and will meet a contest in all parts of this country, which may result in a revolution. The railway of the present day is quite as much a public highway as the former road across hill and dale, over streams and swamps, through forest and plain, and known as the old dirt road, ever was. The public is dependent upon such highways for all the means to which they resorted to the other kind in former days. It is a public utility, its powers, its rights and its duties are public in character; and those who possess and manage such institutions must realize, if they have not already done so, that the public interests are to be supplied and the public views must be respected. It would not have been the occasion of excitement or contest, if such corporations had continued as they were at first created,—whereby the means of a large number of the population, where it passed and to whose business it gave attention, had been invested for its construction. As matters now stand, and as they have done for several years past, those who first built our lines of traffic have lost all their investments, and what was then owned by many has now become the property of a few. More men are now employed by a railroad corporation and labor in its service than any owner of property, in the olden times, could ever derive profit or support from. He who has the controlling stock in a railroad corporation to-day receives the fruits of thousands of servitors. They labor, but for him; he labors not, yet he reaps the fruit of their earnings. The acquisition of a

constructed railroad by anyone from others has been an open undertaking in the commercial life of this country, and no well sustained objection can be made to such a course of dealing; but others have rights in its use as well as those who own it, and the State has conferred powers for its use, which belong to the people who created the State, and upon whose efforts it does now and must ever depend. Profit, in the name of dividends, may well be earned by those who control and operate such properties; but it is difficult indeed to make any one see, that a fictitious capital should now be in the place of what was cost of real construction, and that by such multiplication and by enormous salaries and great expenditures a price shall now be adopted as the basis of remuneration. If one is in the service of a corporation of this kind, he should be found on its list of servants, as are its engineers, brakemen and other employees. He should not be in that service, and still undertake, under such employment, the duty of law making. Salaries to officers and reasonable compensation to those needed in its operation should be considered in estimating the foundation, upon which reasonable profits should be based; but it is hard to convince a thinking man or the public that the tremendous salaries, extravagant expenditures for corrupt purposes, or the expenditure of any desired sum in political methods, should be taken as a basis for the profit, to which the owners of a corporation should be entitled. As sure as fate such corporations have got to meet and contend with opposition to such a course. The part of wisdom, on their part, would seem to be to conform their dealings with that to which the public is entitled; and thus to save themselves for legitimate expenditure or profit a large sum, which annually has been applied to other purposes, but which should be used for their own restitution and profit. Dispute it as they may, or hope to find other means of accomplishing their own personal ends, corporations may.



understand that, from this time forth, there is a struggle between them and the people of this country. If they be wise, they will try and obtain the support of the best people in this country without making them feel that established rights will be destroyed, and that not a dollar will be paid for the purpose of dishonesty or corruption. This fact once established, the sustenance and support of all communities may be relied on. Without it, it cannot exist. Opposition will ever occur. How can it be accounted for, that the cost of transportation on a small connecting road shall exceed in amount that charged on a main line, many times greater in length than that which connects with it and pays tribute to its labors and its profits?

Another great subject for the action of the American people is the tendency, which has so long prevailed, to pervert municipal and other like powers and interests for the reception of illicit gains. From all directions come the determination on the part of the citizens of this country to stop grafting, which is but another name for stealing, from all of our public institutions. In states, in counties, and in cities men are found alive to the emergency, which says that dishonesty shall no longer prevail, and that public works are to be paid for on the basis of decency and integrity.

In the Federal Court of last resort, there have been a number of decisions of great interest since our last meeting. In *Aikens vs. Wisconsin*, 195 U. S., a combination and conspiracy to do unlawful things has been decided as justification of conviction in both state and federal courts, and without a violation of but upholding the Fourteenth Amendment of the Federal Constitution, and that the said Fourteenth Amendment does not control state laws affecting personal liberty or matters of reputation. In *Gaslight Company vs. Chicago*, 194 U. S. 1, the court held, that a company buying the property of another could not

defeat the power of the State to fix the price of light and fuel below what the charter of the absorbed company had permitted. In *Brown vs. Schleier*, 194 U. S. 18, it is held that a receiver of a national bank cannot defeat as *ultra vires*, or contrary to the federal law, a surrender of a lease in good faith to a lessee. At page 25 of the same volume that court holds, that a railroad company must produce papers, documents and books showing unfair discrimination in rates to the Interstate Commerce Commission, and that in a proceeding by any person before said Commission for redress a contract with a third party is relevant. In *Minnesota vs. Northern Securities Company*, 194 U. S. 48, it was held that a party could not go into a federal court to enjoin a violation of an anti-trust act adopted by the State. A singular case was considered under *certiorari* to the Fifth Circuit Court of Appeals in 194 U. S. 120, where a Mexican corporation was sued in the Northern Division of Texas, by a citizen of Texas for death by wrongful act, and judgment there obtained by the plaintiffs: The Circuit Court of Appeals for this circuit reversed such judgment, and its reversal was sustained by the Supreme Court, with dissent by the Chief Justice and two associate justices,—it being held that, although the action was transitory, the damages and cause of action and judgment were governed by the laws of a foreign country, and that the United States could not render a judgment for death caused by negligence in Mexico, as authorized by the law of that country. In two cases against the Governor of Virginia and others, the Supreme Court held that the dismissal of a petition for prohibition to prevent the canvass of votes at a congressional election could not be reviewed after the canvass had been made, certificate issued and the holder thereof admitted to the House of Representatives, nor could the refusal of injunctive relief under like circumstances be reviewed.

In 194 U. S., 441, it is held that a bankrupt's property in the hands of the trustee is still liable to State taxes. In many cases in this and succeeding volumes the Bankrupt Act has received a clearer exposition. Experience has shown that it would have been far better if a bankrupt law, prepared and introduced into Congress some years ago by a representative from Alabama, General William C. Oates, had then been adopted, with the amendments and changes which practice has shown to be necessary.

In *Ohio vs. Dollison*, 194 U. S. 445, the Federal courts recognize the full validity of local option laws.

A good deal of novel, if not conclusive, law, has been decided in regard to the Phillipine Islands, in *Kepper vs. U. S.* 195, U. S. 100, with, however, the dissent of four members of the court, who say, it is hard to see how this can be the law, if the court was right in previous decisions.

In *Dorr vs. U. S.* 195 U. S. 138, it is held that Congress may do as it pleases with territories, and that the Phillipine Islands are no part of the United States.

In *Bank vs. Wiley*, 195 U. S. 257, it is held that, although a party to a note authorizing him to appoint an attorney to appear and confess judgment, may obtain what is so authorized by the terms of the note, no subsequent holder, or other party, could do so, and that the court was without jurisdiction to render such judgment in favor of any other party than the one to whom such note was made, and that such a judgment in favor of any other party can be attacked collaterally.

There is now pending in the Supreme Court of the United States, in *ex parte Riggins*, on a petition for *habeas corpus*, a case which contains several new and most interesting questions, which will require new consideration of the effect and application of the Thirteenth and Fourteenth Amendments to the Federal Constitution, and in which will, in all probability, be determined what are the rights of a citizen, when, although the State has accorded

him by its laws equal protection by due process of law, the administration of that due process by the established agencies of the court is resisted and defeated by the strength and concentration of a portion of its people. The formation and use of mob law and violence thereby may therein receive restraint or otherwise by the interpretation of the two constitutional amendments referred to.

The important legislation of other States is, in substance, as follows: Iowa, for the session of 1904, passed an act making all the carriers liable, where freight was transported by two or more railway companies as carriers; and another requiring such carriers to bear and return, free of charge, shippers of live stock. It also made the State Agricultural College a public highway commission; and passed another regulating the operation of automobiles and all motor vehicles. An act abolishes assignments of error in appeals in all civil cases.

Maryland, in the session of the same time, amended its game and fish laws in various counties. It makes it a misdemeanor for any merchant or trader, by shop or store, not to provide seats and places of sitting for women employed; and punishes failure to provide for wife and children. It validates all conveyances imperfectly acknowledged or recorded.

Louisiana, in the same session, passed for submission to election many constitutional amendments, among them one to allow appropriations for pension of Confederate veterans needing it. All judges, juries and court officials of every kind, are prohibited from practicing as attorneys. Notice of *lis pendens* is required to be recorded.

Kentucky, in 1904, makes stealing by force, bank robbery and such acts a heavier felony in penalty. It adopted a Negotiable Instrument act, to be in uniformity with that in other States.

Ohio, at that time, makes important changes in its primary election law. It creates as a public institution a san-

itarium for tuberculosis; and makes the pollution of water used for public purposes an offense, and extends the distance of the limits of a municipality for its punishment to a distance of twenty miles. It reviews and renews a public road law.

West Virginia, in 1904, provided, that if a license to sell liquor was lost by person, to whom issued, for a violation of law, it could never be re-issued or restored.

Virginia prohibits sales of adulterated food, and regulates oyster beds, in that year's session. It made many amendments to its code, and allowed certain judges to practice law.

Georgia, in that session, prohibits buying or selling votes in primary elections. It raised a commission for investigating tuberculosis. It purchased for its capitol a portrait of Gen. John B. Gordon.

South Carolina requires banks to make quarterly reports, prohibits the importation of the boll weevil, and makes carrier convey 200 pounds of baggage without extra charge.

Mississippi, in 1904, permits illegitimate mothers and children to sue for the death of the other by negligence or willfulness. It undertakes to combat the boll weevil.

New Jersey passed laws for regulating the age of employment of children; for pure foods; and for public hospital for tuberculosis.

New York, in 1904, passed many amendments to its code of civil procedure. It adopted an additional section to the Negotiable Instrument act, in regard to forged or raised checks. This feature of that act should be adopted by other States conforming to it.

Massachusetts and Rhode Island passed their usual number of laws for the benefit and protection of their people.

Wyoming, in the session of 1905, adopted the uniform

Negotiable Instrument act; and provides that corporations may be receivers.

South Dakota, in that year, regulated motor vehicles.

Missouri, in 1905, makes a defendant sued for money also pay a reasonable attorney's fee on judgment for recovery. It vests the power to license attorneys exclusively in the Supreme Court.

California, in 1905, made many changes in its civil procedure act. There, no exceptions need be reserved to a charge of the court taken down by a court reporter. Negotiable instruments must be paid in money only and with no conditions except costs and attorney's fees.

Returning to matters within our own State and the decisions of our courts on the recent acts of our legislative department, it may be proper to say, that the duty of the court to pronounce unconstitutional any act of legislation which violated, in its enactment or prior and attendant proceedings, specified provisions in the constitution cannot be doubted or questioned; but its construction of words there used and the definition there sometimes given them, with respect to the creation of circuit and chancery courts throughout the State, has caused a considerable degree of surprise and difference of opinion. By sections 139, 142, 143 and 150 of our present constitution the circuit court is made as much of the State's judicial department as is the supreme or any other court. In the judicial history of the State the circuit court antedates any other. Being such court, a law fixing a time for holding its sessions of court could not be different in character from a statute, as in section 3828 of the present code, fixing that of the supreme court. Although in practice the law has always prescribed the terms of court, yet this is not essential to the creation of a court nor of its character; for, being created, its terms may be indefinite in extent of time, or left to the discretion of the judge, or be perpetual in its jurisdiction. When

the legislation has prescribed the time and place of sitting of the court, these are construed to be elements of jurisdiction, as was held in *ex parte* Branch, 63 Ala. 384, and other cases; but none of these decide, that either the time or place of a court's term determines what kind of a court it is, or what is its jurisdiction as to parties or subject matter. Thus a law fixing a time for holding court might be a local one, when that creating the court itself was not. Therefore, it has been thought by many, that it was to be determined whether a law creating a circuit court was a special, private or local law, by what it created and established; and that if its object was to establish in somewhat different shape, as to the number of judges only, a circuit court, it could not be a special, or private law, because not one applying to an individual, association nor corporation, nor a local law, because it did not apply to any subdivision of the State less than the whole only, but to the whole State, as the circuit court has done in all its history, although its members have changed in the number to meet an increase in that of its circuits, from its jurisdiction and the extent of its trials, process and judgment, which have been operative, decisive and effective not only in that section, where the particular division of this court sat, but in all parts of the State of Alabama. Nor is the character of the court, nor of the nature of a law creating it, changed by a provision relative to fixing its terms, which might be of only local application, when the jurisdiction and character of the courts was general. Such must have been the views of the members of the last legislature, by whom these laws were passed, as seems to have been shown to the constitutional convention before its adoption of sections 105, 106 and 110 of our existing constitution. This destruction of several such acts as those already referred to and others equally as important has not brought about any extra or called session of the legislature, the necessity for which was thought by some to be thus indicated. Probably, the

omission to do so will wisely afford ample time for reflection, that some of that legislation which has thus failed of operation can longer remain so lost without detriment, or that such changes may be embraced in it in the future as will render it more beneficial. But, if the provisions of the constitution mentioned were to be construed by a different light from that now applied to it, the next legislature ought to submit for election some amendments, by which the distinction between the powers retained by and those denied to their legislative department may be better understood.

There is not to be found in the acts of the last legislature any substantial change in the jury law of this state. There would seem to be needed some notable corrections in our system, which experience fully sustains. In the original formation of juries drawn from a box of qualified persons, such a number of persons should be empanelled to comprise enough to meet all peremptory challenges, that may be allowed in any save trials of capital cases; and the place of each of those excused from duty should be supplied by a drawing as before. In no case should the summoning of a talesman be tolerated as now permitted by law.

The possibilities arising from the entrusting of the disposition of the solemn interests of parties to suits to a choice in any measure dependent upon the influence or political strength of the professional and idle jurymen, or the favorite of some person, on hand at the instance of one party, when the challenges of his adversary were exhausted, or by questionable arrangement with the officer executing the summons, would thus be removed as far as human power can provide. That the evil requiring this correction has done its work and wrought its injury has been observed by almost every attorney. In some places, it is doubtless worse than in others. In some a larger element of the professional jurors may exist; their power in political affairs, from numbers, class and activity, may be



of the controversy, which can then be made, like Harper's race, "*from eend to eend*," and without frequent reversals and trials on technicalities and immaterial questions. This course would not injure lawyers or their profession, nor call for their knowledge and attainments to be less on ancient than on modern law; but it does give to the individuals, whose interests and values are at stake, the chance to have a just and a single adjudication of all that is comprised in their disputes.

Many of these thoughts have been brought to mind by reading the very valuable paper of the Secretary of this Association, Mr. Alexander Troy, at our last meeting. He then called attention to the subjects which had been discussed before this body by papers of its members and their arguments made at its session. At its first meeting, after that looking to its organization, held on December 4, 1879, both Henry D. Clayton and George F. Moore showed defects of pleading and practice, several of which have been since cured by legislation. The latter of those named, at its next meeting repeated many of his suggestions on this subject, but advocated the New York Code System. It is not to be forgotten that he then and there recommended separate divisions of the Supreme Court, which has been recently adopted by law. Following this, John M. McKleroy pointed out how wisely and conveniently there could be a union of common law and equity jurisdiction in the same court, which has been sanctioned by legislation in establishing a number of such courts, and plainly illustrated the division of subjects by such single courts. Hannis Taylor urged an International Code Commission. The value of this doctrine was fully recognized at the assemblage of the Universal Congress of Lawyers, at St. Louis, in 1904, which seemed without opposition to an International Code on many lines. Mr. Taylor's paper also stood for a system of uniform divorce and commercial paper laws. Thomas G. Jones, of the Committee on

Judicial Administration, recommended an act for the oral examination of witnesses in equity cases, and legislation here has accomplished this. At the next, the Committee on Jurisprudence recommended changes in the married woman's law and estate, which the legislature afterwards accepted. A. B. McEachin advised changes in both Code and Reports, for some of which law has been enacted. L. A. Shaver adhered to jury trial, but some of his proposed changes in the jury system have been adopted; E. P. Morrisette discussed some abuses in the homestead law, some of which legislation has corrected; Henry St. Paul urged correction of our inheritance law, and legislation has in part since done this; and John D. Gardener insisted that a regular bankrupt law should exist in this country, and some portions of his suggestions congress has since put in operation. On August 1, 1883, Stephens Croom in a valuable paper showed that a lien of judgments should be supplied, and legislation has been directed to this end; Henry Wilson and John A. Foster contended that the personal representative should not have power, where no debts required it, to sell lands of decedant for division, a subject which should yet receive more attention. James Weatherly, on December 3, 1884, pointed out the means of avoiding judicial delays, some of which have become law; and F. S. Ferguson showed evils of the criminal law, some of which legislation has corrected. At the next, W. B. Hutchinson commended arbitration as a substitute for war, and the Hague Conference confirmed many of his recommendations. At the same session, S. W. John pointed out evils of local and special legislation, which the last Constitutional Convention appears to have properly appreciated and to have taken precautions against. At the session of 1886, D. T. Blakey suggested changes in Probate Court proceedings, by which they might be simplified; and some of these have been adopted, and others might yet well be. Mr. F. G. Bromberg pre-

sented his bill for a uniform system of commercial law. At that of 1890, George F. Moore advised some useful legislation as to Justices of the Peace, much of which might well be passed into statute law, and remain there forever. On July 15, 1892, attention was directed to the necessity for a better regulation of adverse possession, under which a law was drawn and afterwards passed. A number of other states have since then pursued a similar course on that subject. At the Sixteenth session, on July 5, 1893, the Committee on Judicial Administration reported bills for changes in descents and distributions, regulating exceptions, granting new trials and the ascertainment of dower, which have become laws. Another for the prevention of fraud by companies, requiring production of books and prohibiting such by shareholders, but not in certain cases by representatives, has been enacted. On July 10, 1894, a bill was presented to authorize an officer to require a complainant to give bond before a receiver was appointed, which has become a law. Some of the suggestions in the paper of S. D. Weakley, on Labor and the Law, have been adopted by legislation, and others might be. At the Nineteenth session, J. V. Smith discussed the age of consent in certain criminal cases; and an act then offered by him has since become a law of the state. The report of S. D. Weakley, from the Committee on Judicial Administration on June 17, 1898, contains several important acts, some of which have been adopted by the legislature. Copies of bills were presented by this committee at the meeting on June 17, 1899, authorizing sale of land adversely held, for appointment and action of Referees, and for judgment in ejectment, some of which have been since adopted by legislation. Much of the report of said committee, at the Twenty-Fifth session, by W. T. Sanders, as to corporations, has since been carried into legislation. At the Twenty-Sixth session effort was made to amend the disbarment law then contained in Sections 598 to 510 of

the code, and this was afterwards adopted by the legislature. This legislation seems to have met a response in several quarters. By inquiries from other bar associations its necessity was felt elsewhere than here alone. Discussing this subject on page 323 of the number for August, 1904, Law Notes uses this language: "The ambulance chaser has indeed been too much in evidence lately, but the temporary prominence acquired will doubtless soon lead to the practical extirpation of this species of vermin. Considerations of public decency, as well as the common sense of prospective litigants, will co-operate with professional ethics in restricting the operation of such persons. Nevertheless, the profession itself must increase its vigilance. The steps lately taken in Alabama are worthy of emulation in other quarters. There the Bar Association procured the passage of an act making it a misdemeanor and disbarable offense for an attorney by his emissaries to solicit practice. It is also made the duty of the State Solicitor to prosecute such offenders upon the complaint of the State Bar Association, or its Central Council. The high character of the gentlemen comprising this council is a sufficient guaranty that no prosecutions will be undertaken where the facts have not been fully investigated, while at the same time it affords an assurance that no real culprit, however prominent or influential, will be beyond the reach of punishment. The value of this piece of legislation is already shown by the fact that more than one offender has voluntarily surrendered his license to practice. There may be similar statutes in other states, but they have not come under our observation. The mode of dealing with the trouble is effective, and we see no reason why it should not be universally adopted." From this it will be seen that the State Bar Association has not been altogether an idle institution, nor has its efforts been only for the benefit of its members, but for all interests in the state and for every part of its

more largely felt. Oftentimes, the influence both ways may be bad. But no good officer or citizen can object to or regret, that the drawing of jurors from a shaken box, by the judge in open court, cannot be unfair, that no individual has any means of selecting his own tools or favorites for the high duty of trying causes, and that to the fullest extent a trial is the submission of the question of truth and right to disinterested triers of the facts in evidence. The officer is better and more serviceable the less it is incumbent upon him to reward his strikers, or use his place for base purposes; the professional juror has thus the opportunity of devoting his idleness to better effort in other labor, or not to direct it to the injury of any other person; while the litigant, his counsel and the court, Heavens knows, can more safely feel that a cause will be more justly determined.

In one other particular does the jury law of this and most all the other states contain an inconsistent element. A different number of challenges is accorded to the state and the defendant, the excess going still further, if there is more than one defendant. Why this preference should be shown, why a person accused should have more opportunities furnished for his escape from crime than the public good should have for securing his punishment, if guilty; why there should be accorded to one or the other more than an equal show, is past all argument or explanation. If at any one time in the history of this country, when the inclination showed a tendency towards too speedy or too certain conviction or harshness of punishment, such a state of things appeared, manifestly, it cannot be insisted that it is now to be found anywhere. On the contrary, the indications all are, that every facility is afforded in the courts by intricate pleadings and motions, by sentiment and indulgence, by delays and special favors, by preference of law and by repeated reversals in appellate courts, upon technical and oftentimes insignificant and

irrelevant rulings as to the admission of testimony, as well as by the chance of rejecting more jurors than his share, to the criminal for relief from the penalties of crime, by making the courts his place of refuge after injury or death has been ruthlessly and flagrantly inflicted by the guilty upon the innocent and helpless. Why then, should not the people of the state, which is supposed to embody the good and law respecting portion of its population as well as its vicious and law-discarding, stand in an equal attitude before its courts? Would it not be as wise, if such a policy is not to be accepted; to allow open warfare between such an assailant and the persons threatened with attack, when, under prescribed conditions, each enemy, with his following, might resort to the usual war-like accompaniments of assault and defense, by stratagem, retreat, advance, or surrender, with terms established, as to cause one to be slain without notice, when no restraint for that or other homicide is enforced to prevent its recurrence upon some one else? With the addition of requiring every juror to be a householder and freeholder, whose interests thus call for the maintenance of law and order, a change for the better could be found in our jury law.

In one other manner, it is believed, better results could be reached in criminal cases. If it were provided by law that, when objections are raised on the trial to the admission of testimony, the jury might be withdrawn, the testimony offered at length and in all forms proposed to the trial court, and the witness allowed to give his testimony in answer to the questions and then if the rulings of the court were adverse to the defendant, exception reserved and made a part of the record, and the appellate court be required to say whether such testimony, if offered or denied, should have changed the verdict, many appeals would avail nothing; and thus the probability of acquittal on a second trial, when witnesses were removed or interest lost, would be taken away.

Would it not also be prudent for the law to say, that, if the appellate court, after having considered such evidence thus excluded or admitted, and treating it as fully weighed as if offered or excluded, should upon all the record so completed affirm a conviction, if in their opinion such record justified it? Should an appeal in a criminal case be allowed a defendant upon anything but the evidence affecting the merits of guilt or innocence; and should not the state be allowed an appeal therein upon the same grounds as a defendant, with a reversal in its favor, when proper and on questions of law only, and a new trial accorded it, if it so appears that the acquittal was wrongful and erroneous in law?

It will be replied, in answer to the last inquiry, that Section 9 of our Constitution which says, that "no person shall for the same offense be twice put in jeopardy of life or limb," would be violated by an affirmative. But can any one be put in jeopardy by an acquittal erroneous in law; and cannot a statute expressly authorize to the state an appeal as it now does on all constitutional decisions on statutes? Is not jeopardy derived from a second trial, when the first acquittal was based upon errors of law, one of the delusions of the law, which experience and charged conditions demand should be redressed?

A suggestion may be ventured in one other respect touching our judicial system. By law, of quite venerable age, the power has been conferred upon the Supreme Court and approved by enactment, for the adoption of rules for its own and other courts of record, not in conflict with other provisions of law. Such a power is, doubtless, a necessary one, and also useful in saving much labor to the members of the court. But should it not then be provided by statute, that no rule, which affected the merits of an appeal and prevented the consideration of such merits, should be in force, except upon proper notice by the party invoking it, or the court, to the counsel for the

party to be affected by it, with the privilege of correcting any part of the record, or anything in connection therewith, as is allowed by amendments in other courts? Let not this be resented as adding to the work and duties of the court; for while the rule may lessen their labor, yet labor is one of the functions of their exalted place, and the enforcement of the rule, as it now stands, while restful to them, may result in loss of life, liberty or property to him, whose all is staked upon the issue, and who has sought by appeal their better knowledge of the law. If correction by amendment so as to make presentation of the true merits of the case and have it considered thereon, is needful and right anywhere, it is so everywhere, when courts are made for the purpose of seeking, hearing and determining the truth.

Several times this Association has directed its efforts towards the adoption of a simpler and more advanced system of pleading in civil actions. The logic of the argument is irresistible, that a true system can consist only in a sworn petition and answer by the parties in every civil cause, in every jurisdiction, stating the substantial facts of the transaction involved sustaining the complaint or defense. The preparation of such a system by a code has involved close attention and arduous labor; and in some instances, where it was undertaken and creditably performed, subsequent legislation has made it extended and complicated. This has changed the views of many, who accepted the principle from which it sprung. But the simpler and briefer and closer confined solely to the form and substance of pleading such a change was made, the stronger and more useful it would be and become. Its place in our existing code would not require the loss or destruction of any material part or plan in what our laws secure. But those material things will be more fully and plainly set forth, and the records on which the final judgment is rendered will contain all the substantial elements



population. No rashness is indulged, in saying, that as much as, if not more than, any other body or organization within its boundaries, has this Association endeavored to promote and contributed to a suitable progress in the governmental powers, and in assistance to new questions which may enlarge and improve the advancing and incoming undertakings for our state's prosperity. With new industries and new methods, the old institutions have felt their force; and day by day new conditions have arisen, for which training and energy must be discovered and applied. Great industrial development has been going on for many years past in all parts of the state, and legislation has, in the nature of things, been much occupied in that direction. With the drift of public thought follows that of its branches of government. Mines and industrial enterprises have rapidly grown and increased in number and in the capital employed in a large portion of the state; nor is a co-equal tendency toward advancement been lacking in all other directions. Along the great gulf coast maritime increase and wealth have already greatly grown; and the future of that section cannot be calculated. Lines of railway, vessels and means of transportation carry heavier tonnage, and demand far greater facilities. When the Isthmian Canal is begun, and, more yet, when it is finished for the use of passage of the world's commerce, when the voyages lead by safe channels and balmy seas, almost always in sight and reach of land, over the blue waters of the gulf, through the water-way of the Panama Canal to the broad ocean which must be crossed to distant but profitable ports, when the attractive islands of the West Indies, fruitful and teeming with wealth, are joined in the community of a government of free institutions and in commerce with the continent of the Republic of America, as nature intended them to be, and where the geography of nature has defined them, and when the American citizen has his home and his rights there as from Colon to Panama,

where on this earth can be found a more profitable, delightful and beautiful country than our city of Mobile and all along the gulf coast connected with it, and on the rivers which enter Mobile Bay. Save where the waters of the bold Tennessee roll from the Blue Ridge, along productive mines, quarries and ores, fertile fields and rich pastures, by towns and cities alive to every signal of exertion, moving frontward in achievement and industrial development, unite with those of the Ohio, Missouri, Arkansas, the Red, Chicago and other streams to seek the gulf in the mighty rush of the Mississippi, all the rivers and waters of Alabama employ their floods and bear their tribute to the wharves at Mobile. Back of this section forests have yielded wealth and still afford it to the marts of the world, and the soil is yielding beyond the dreams of man. Along Alabama's eastern and southern lines industry, skilled labor, honest toil and the acceptance of new plans and methods are steadily moving it forward in abundance and unbroken prosperity. Through the center of the state, where the rich black belt stretches, great progress has been made, and it stands at the threshold of a wonderful degree of advancement. With a soil of almost unequalled fertility and depth, the old system must there more and more give way to that which has come. A tenantry, which has often been injurious and profitless to both sides of such an arrangement, will ere long be replaced by a different order of things. The muscle and capacity of its former laboring class have already sought and obtained, and will more largely continue to do so, what appears to be greater reward in the mines, furnaces, foundries, mills and other enterprises, along lines of transportation and in the manual services of towns and cities, oftener extended than can be made customary in agricultural pursuits. The occurrence of this, although genuine comfort, stability and homelike safety may be thereby greatly destroyed, and exchanged for exertion, necessity and the

strife of bread winning, will require other methods for this favored region. The farm will take the place of the plantation. And when it does, all that science has attained will be put into play for agriculture; the machinery of the new era will accomplish the work here that it has elsewhere; another soil will be brought to the surface to render service for that which has long borne its crops, if just and rational cost of transportation is allowed or obtained, larger yields of both necessities and luxuries will hence be sent to market; it will bear its fruits in order and certainty; new and brighter homes will draw thither an intelligent, earnest and greater class of dwellers than many a wide area now contains; multiplying herds will fill and adorn the swelling prospect of the beautiful prairies; and, once again, the South and our State will possess the fascinating life and fortunes of the canebrake.

The state has done well its part in many respects. It has been faithful to every obligation and justly discharged its debts. The burdens of government have not been excessive, and have been met as they accrued, with a fair prospect of a proportionate decrease. It has fostered and improved its public school system without regard to class or race. Aid has been given to its public institutions of learning, and wherever it has appeared that the aim of those controlling their affairs, irrespective of race, was pointed to the help of their fellowmen, assistance has not been refused, nor animosity more than indifference been tolerated. So actuated, may such efforts continue and increase, so that education, that great parent of civilization, may be within the reach of all, greater things may be performed by our people, both brain and body be made stronger, purer and better fitted for their toil, and this world be composed of better men:

“Trained now to that grandest of arts, teaching the right,  
To the needy soul and moulding the minds of men,  
As they should be.”

At the first regular meeting of this Association, it began consideration and correction of our jury system, as it then stood, and concurred in what it was informed had been the work of Thomas Seay, then a member of the Senate of Alabama for a period of several months and after a careful investigation of the ways and results of the system then existing, and a thorough deliberation of what changes, according to the sentiment of that date, were practicable. He succeeded in obtaining the passage by the Legislature of the act he prepared in all essential particulars; and by that means brought into practice a far better plan than had formerly prevailed in this State.

Early in the formation of this Association, Mr. Frederick G. Bromberg, one of the earliest, if not the first, of its open advocates in the United States, recommended the preparation for and adoption by the legislatures of all the states of a uniform Negotiable Instrument Act; and, if not then, at an early subsequent meeting, presented an act for this purpose. Strange to say, this law, although it has since been adopted by thirty-four of our states, including all those of commercial and financial importance, and contained, as adopted, all, or nearly all, the provisions set forth in the bill he presented to this Association, and although its terms have been so plain that very few cases of dispute between parties or for construction of courts, under the terms employed, have arisen in any state, it has not been adopted by our Legislature. So valuable a work by a member of this Association, already in force where the subject of negotiable instruments most often occurs, and in whose rules of law in relation thereto all the business interests of Alabama are deeply concerned, should not longer be kept unadopted by our law making department. Are we not now enough of one people, and are not our trade relations so closely connected, without the possibility of interruption, that we can consent to a uniformity of laws, where the best interests of each will be safeguard-

ed by a correspondence of both right and remedy that can be known to all? Should not the same principle apply to laws of divorce, upon which so many rights of property may be dependent, where the family relation is so far involved, upon which our religion and our civilization so deeply stand, and which our committees have so frequently advised?

Perhaps, a step in this direction by the Legislature of Alabama, may receive support in many other places. Among good men and women it always will. Such a movement, irrespective of sect or denomination, under the leadership of Bishop Cheshire, met with an eminent degree of success in North Carolina, at the meeting of its last legislature; and thus begun the expression of Southern sentiment for this restoration of venerable and better principles.

In bringing to your view what has been done in the past by this organization and what has been advised by it yet to be done, the object has been not only to convince you, that our purpose is a good one, and it has in part pursued and performed it, but to show you likewise that there is and will be great occasion for your labors in the coming time, to which you and those who follow us may bend every energy for both the good of our profession and our people. By this effort can it be hoped to see, as one of our Southern poets has prayed for:

"Day of our might,  
And light universal! Day with no night.  
When not one son of man destitute dies!  
Day when enlightenment lifts to the skies!  
Day of the pure, rich gold! Day without black!  
Roll Thou, the curtain of ignorance back."

This word I would leave to those who remain in the work of this Association, and who are yet to keep up the duties of their profession: Uphold the law, lend all your energies to the preservation of right, and the suppression of wrong, not that punishment may be oftener administered,

but that it may not be needed by men. The law must be, and can only be, the protection of the innocent and helpless; its voice the only one that will be obeyed. With it there is safety and good order and peace; without it, there is disorder, violence and wickedness. Maintain law and order, for with them attend liberty and security. There can be no sound law unless there are true men to sustain it in the courts of justice. Good men, honest and courageous, must be the judges of the land, for without them, or with those of another sort, constitutions are worthless and statutes are silent and powerless. Order is the fruit of the law, and law must be respected, if civilization and faith shall endure. Therefore, is law and order all that we hope to attain; for "Its seat is the bosom of our Lord, and its voice is the wisdom and love of the Creator of Man." Now, as here and before, Bretheren of the Bar, in respect and honor, I salute you.

ANNUAL ADDRESS  
BY  
**HON. JOHN W. JUDD,**  
ON  
THE FOURTEENTH AMENDMENT—ITS HIS-  
TORY AND EVOLUTION.

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*Mr. President and Gentlemen of the Alabama State Bar Association:*

This paper has to do with the history of the enactment and judicial evolution of the First section of the Fourteenth Amendment, to the Constitution of the United States, which is as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

It is quite safe to say that if this provision had been embodied in the original Constitution of 1787 it would never have been ratified by the states; and a further effort would have been necessary to the formation of a more "perfect Union."

The original thirteen states under the Articles of Confederation, had prosecuted a war of seven years duration

to a successful conclusion, for the purpose of not only establishing their independence, but for the purpose of arresting ultimate sovereignty from the King of England and transferring it to their people.

The issue direct and unmistakable between the American States and the King of England was: In whom rested ultimate sovereignty, the King or the people of the states?

The Declaration of Independence uses this language:

"The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over *these States*."

I shall not argue the question, but shall content myself with a statement of what seems to me to be an incontestable fact of history, that the States as States each acting for itself through and by its people formed, consented to, and established, the Government of the United States, under the Constitution of 1787.

This was done, too, with the distinct understanding that ultimate sovereignty rested with the people of the States.

No better evidence can be found than the debates in the Virginia Convention called to take action upon the ratification or rejection of the Constitution. Patrick Henry, who was ever ready with his torch to light the fires of liberty, vigorously attacked the Constitution, using the following language:

"This proposal of altering our Federal Government is of the most alarming nature! Make the best of this new government—say it is composed by anything but inspiration—you ought to be extremely cautious, watchful, jealous of liberty; for instead of securing your rights you may lose them forever.

"I have the highest veneration for those gentlemen; but, Sir, give me leave to demand; what right had they to say, '*we the people*'? My political curiosity, exclusive



of my anxious solicitude for the public welfare, leads me to ask, who authorized them to speak the language of '*we the people*' instead of '*we the States*?' States are the characteristics and the soul of the Confederation. If the states be not the agents of this compact, it must be one great consolidated national government of all the States."

To this John Marshall (afterwards Chief Justice) replied:

"We are threatened with the loss of our liberties by the possible abuse of power, notwithstanding the maxim that those who give may take away. It is the *people* that give power, and *can take it back*. What shall restrain them? They are the masters who give it, and of whom their servants *hold it*."

In the conventions of others of the States, similar views were expressed.

The history of the civilization of mankind records not only a constant, but continuous struggle over the question of, whether man was made for government; or the government made for man. Human liberty insists on the latter; the ruling forces, by whatever name called, on the former.

Mr. Henry was fearful that if the State of Virginia agreed to the compact she would enter a consolidated government from which there would be no retreat; John Marshall, on the other hand, (Federalist as he was) said no; the people of Virginia are sovereign, they are the power that gives, and they are the power that "*can take it back*."

When the Constitution was ratified by the States there was a universal demand for the enactment of a bill of rights as a part of it, some of the conventions expressing the hope and confidence, that Congress at an early day would submit to the States for their consideration a bill of rights. In answer to this sentiment Congress did at its first session prepare and submit the first ten amendments. The Fifth Amendment, among other things, provided that:

"No person should be deprived of life, liberty or property, without due process of law."

The Tenth Amendment is as follows:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

This Tenth Amendment set at rest once and for all the fact, that the Government of the United States was not only a government of limited powers, but that such powers, and *all* powers of government not delegated to it by the Constitution were held by the States and the people thereof.

The Fifth Amendment protected the people in the right of "life, liberty and property." When this is done the sum of human liberty is secured, for life, liberty and property is the same as life, liberty and the pursuit of happiness; which is the be all, and end all, of human and individual liberty.

Anglo-Saxon government is progressive, and in the nature of things this must be so. The one thought of the Anglo-Saxon people always has been that liberty is the Ultima Thule of all government. Everything must bend to and subserve this purpose. This idea is expressed in our sacred Declaration of Independence:

"We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness. That to secure these rights governments are instituted among men, deriving their just powers from consent of the governed; and that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation upon such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."

Sometimes these people have destroyed governments by the strong arm of revolution, and erected others on their shattered remains; at other times they have evolutionized their governments by the slow process of legislative and judicial development, and it was just exactly this process which led up to the enactment of the Fourteenth Amendment.

The question of state citizenship was fairly well defined in the history of our government prior to the war between the States; but citizenship of the United States as such, separate and apart from that of the States, if it existed at all, was but little more than a name. This condition of things was emphasized by the holdings of the Federal Supreme Court; that the provisions of the Fifth Amendment in favor of "life, liberty and property" operated only as a restraint on the Federal Government, and in no manner applied to the action of the States as such.

Thus we had this condition of things; citizenship of the states existed; these citizens were entitled to life, liberty and the pursuit of happiness; but they held these rights in absolute subordination to the action of the States, with protection from the central government, except in the single instance where it was enacted, that

"The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several states respectively."

The Convention that formed the Constitution of 1787 was called a Commercial Convention. The necessity for some restraint on the action of the States in taxing foreign and inter-state commerce became most manifest, if the States were to live together in one federation in amity and peace. In time the growth of industry and commerce of the United States became of such importance that it was manifest that if the rights of property owned by citizens of one State and doing business in another, were to be protected in their full enjoyment, it must and could only be

done through a central power, and there was no central power adequate to this, but the Government of the United States.

Unquestionably the results of our civil war gave opportunity for the enactment of the Fourteenth Amendment, and in part, but not in whole, gave occasion for its enactment.

It is believed that the real history and purpose of the enactment of this amendment has been much obscured and misunderstood, and that the majority opinion of the Federal Supreme Court in the "Slaughter-house Cases" has been one of the chief causes of this.

The accurate historian of the future will write; that African slavery was only the *occasion* of our Civil War, and that the *cause* lay in the belief of the people of the Southern States, that ultimate sovereignty was with the people of the States as such; and that as John Marshall said in the Virginia Convention, "*The people give, and the people can take back.*"

So with the Fourteenth Amendment. The Civil War gave occasion and opportunity for its enactment, but the *cause* for its enactment was the idea imbedded in the minds of the people of the United States that the right to "life, liberty and property" had not only not sufficient protection, but was held at the caprice of State action, and in many cases moved and controlled by local interests, and subject to local prejudice, and the uncertain political, and judicial action, consequent upon such conditions. I shall now attempt to establish this by what to my mind is unquestionable history.

We are far enough now from our Civil War to not only take a judicial view of the great men who controlled the government at that time and for some years after; but we can properly judge of their motives, and do justice to their patriotism.

Speaking for myself—while I was a Confederate soldier, and as such felt that I followed my convictions, and did my duty—I was not at all disheartened at the result of the war. I believed that ultimate sovereignty rested with the people of the States as such, and that they had the right to withdraw from the compact, or secede from the Union, if you please; but at the same time I never doubted that the Government of the United States had the right to preserve its existence, and that if it had the power to do this, it was its duty to its people to use such power to that end. The manner in which the Southern people accepted the results of the war, the patriotic cementation of our Union today, give assurance that we can fairly judge the men and their motives who were against us, and not only this; but only and alone, could the present condition of things be produced by Anglo-Saxon civilization.

Ordinarily debates of legislators are not competent to explain the intention and meaning of a statute or provision of a constitution, but they are not only competent, but highly valuable, in ascertaining the true history of such enactments.

The Thirty-Ninth Congress of the United States assembled in December, 1865, and soon thereafter a joint committee on reconstruction was appointed as follows:

On the part of the Senate, Wm. P. Fessenden of Maine; James W. Grimes of Iowa; Ira Harris of New York; Jacob M. Howard of Michigan; Geo. H. Williams of Oregon; and Reverdy Johnson of Maryland.

On the part of the House, Thaddeus Stevens of Pennsylvania; Elihu B. Washburne of Illinois; Justin S. Morrill of Vermont; John A. Bingham of Ohio; Roscoe Conklyn of New York; Geo. S. Boutwell of Massachusetts; Henry T. Blow of Missouri; A. J. Rogers of New Jersey; and Henry Grider of Kentucky.

The Fourteenth Amendment was introduced in the Senate by Senator Howard of Michigan, and referring to

the Constitution and its Amendments, particularly to the Fifth Amendment, he said:

"They do not operate in the slightest degree as a restraint or prohibition upon State legislation. States are not affected by them, and it has been repeatedly held that the restriction contained in the Constitution against the taking of private property for public use without just compensation is not a restriction upon State legislation, but applies only to the legislation of Congress. There is no power given in the Constitution to enforce and to carry out any of these guarantees. \* \* \* They stand simply as a bill of rights in the Constitution without power on the part of Congress to give them full effect; while at the same time the States are not restrained from violating the principles embraced in them except by their own local constitutions which may be altered from year to year. The great object of the first section of this Amendment is therefore, to restrain the power of the States and compel them at all times to respect these great fundamental guarantees. \* \* \* The last two clauses of the First Section of the Amendment disable a State from depriving not merely a citizen of the United States, but any person, whoever he may be, of life, liberty, or property, without due process of law, or from denying to him the equal protection of the laws of the State. This abolishes all class legislation in the States, and does away with the injustice of subjecting one cast of persons to a code not applicable to another. \* \* \* Section One is a restriction upon the States, and does not, of itself, confer any power upon Congress. \* \* \* I look upon the First Section, taken in connection with the Fifth, as very important. It will, if adopted by the States, forever disable every one of them from passing laws trenching upon those fundamental rights and privileges which pertain to citizens of the United States, and to all persons who may happen to be within their jurisdiction. It establishes equality before the law, and it gives to the humblest, the poorest, the most despised of the race, the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or the most haughty. \* \* \*

Without this principle of equal justice to all men and equal protection under the shield of the law, there is no Republican Government, and none that is really worth maintaining."

In explaining the provisions of the equal protection of the laws Senator Poland, of Vermont, said:

"It is the very spirit and inspiration of our system of government, the absolute foundation upon which it was established. It is essentially declared in the Declaration of Independence and in all the provisions of the Constitution. Notwithstanding this, we know that State laws exist, and some of them of very recent enactment, in direct violation of these principles. \* \* \* It certainly seems desirable that no doubt should be left existing as to the power of Congress to enforce principles lying at the very foundation of all republican government, if they be denied or violated by the States; and I can not doubt but that every Senator will rejoice in aiding to remove all doubt upon this power of Congress."

Thaddeus Stevens, of Pennsylvania, said:

"I can hardly believe that any person can be found who will not admit that every one of these provisions is just. They are all asserted in some form or other, in our Declaration or organic law, but the Constitution limits only the action of Congress, and is not a limitation on the States. This amendment supplies that defect, and allows Congress to correct the unjust legislation of the States, so far that the law which operates upon one man shall operate equally upon all."

Roscoe Conklin, of New York, and a leading member of the Reconstruction Committee, in 1882, in an argument before the Federal Supreme Court in a case from California, used this language:

"At the time the Fourteenth Amendment was ratified, as the records of the two Houses will show, individuals and joint stock companies were appealing for Congressional and administrative protection against invidious and discriminating State and local taxes. One

instance was that of an express company, whose stock was owned largely by citizens of the State of New York, who came with petitions and bills seeking acts of Congress to aid them in restricting what they deemed oppressive taxation in two States, and oppressive and ruinous rules of damages applied under State laws. That complaints of oppression in respect of property and other rights, made by the citizens of Northern States who took up residence in the South, were rife, in and out of Congress, none of us can forget; that complaints of oppression in various forms, of white men in the South—of 'Union men'—were heard on every side, I need not remind the Court. *The war and its results, the condition of the freedman, the manifest duty owed to them, no doubt brought on the occasion for the Constitutional Amendment, but when the occasion came, and men set themselves to the task, the accumulated evils falling within the purview of the work were the surrounding circumstances, in the light of which they strove to increase and strengthen the safeguards of the Constitution and the laws."*

In the same case Senator Edmonds of Vermont in argument uses this language concerning the First Section of the Fourteenth Amendment:

"There is no word in it that did not undergo the completest scrutiny. There is no word in it that was not scanned, and intended to mean the full and beneficial thing that it seems to mean. There was no discussion omitted; there was no conceivable posture of affairs to the people who had it in hand which was not considered."

Can any man in the light of this history contemporaneous with its enactment, and that, too, given so soon thereafter by Mr. Conklin and Senator Edmonds, doubt that while as Mr. Conklin said, the results of the Civil War gave occasion for its enactment, that when the occasion came, those promoting and passing it, understood and intended that it should so strengthen the central government, that that government should be able to fully pro-



tect the rights, and immunities, of the citizens of the United States, from one end of the land to the other? But how sadly the real purpose of this amendment miscarried—but for a while only—as I have before intimated in this paper, is due to the judgment of the Federal Supreme Court whose opinion was written by Mr. Justice Miller, one of the greatest judges that our country has ever produced.

Judge Miller, though a Republican in politics, was a great "States Rights Democrat," as most of the great statesmen and judges who have honored that bench and our government.

For the first time the amendment came before our greatest of all Courts for construction at the December Term, 1872. The Court was then composed of Chief Justice Chase and Associate Justices Clifford, Miller, Field, Bradley, Swayne, Davis, Strong and Hunt. The title is, "The Slaughter-house Cases," reported in 16 Wallace, page 36. The Court divided as nearly equal as it could, with Justices Miller, Clifford, Davis, Strong and Hunt on one side, and the Chief Justice and Justices Field, Bradley and Swayne on the other, and it was a battle of Titans.

The case was this: The legislature of Louisiana had passed a bill incorporating seventeen persons as "The Crescent City Live Stock Landing & Slaughter-house Co." To this company was given exclusive right to erect a landing and slaughter-house on the Mississippi River below the City of New Orleans, and enacted that no animals should be landed or slaughtered except at that place, and that the territory covered by this exclusive privilege should comprehend three parishes, namely: Orleans, Jefferson and St. Bernard, an area of 1154 square miles, and containing a population of over 300,000.

No animals intended for human food should be landed or slaughtered elsewhere, and all persons killing their

animals there, were to pay a fixed sum for each animal, and to leave a substantial part of the animal, for the company. If a vicious monopoly could be created, it was done here.

This act was assailed as unconstitutional, because in conflict with the Fourteenth Amendment, as the following statement from the opinion of Mr. Justice Miller shows:

"That it abridges the privileges and immunities of citizens of the United States,

"That it denies to the plaintiffs the equal protection of the laws; and

"That it deprives them of their property without due process of law; contrary to the provisions of the First Section of the Fourteenth Article of Amendment.

"This Court is thus called upon for the first time to give construction to these articles.

"We do not conceal from ourselves the great responsibility which this duty devolves upon us. No questions so far reaching and pervading in their consequences, so profoundly interesting to the people of this country, and so important in their bearing upon the relations of the United States, and of the several States to each other, and to the citizens of the States, and of the United States, have been before this Court during the official life of any of its present members."

The view of the majority of the Court can best be shown by the opinion of Judge Miller, from which I shall quote somewhat fully. In speaking of the three amendments, namely: The Thirteenth, Fourteenth and Fifteenth, and their general scope and purpose, he used the following language:

"We repeat then in the light of this recapitulation of events almost too recent to be called history but which are familiar to us all; and on the most casual examination of the language of these amendments, no one can fail to be impressed with the one pervading purpose found in them all, lying at the foundation of each and without which none of them

would have been even suggested; we mean the freedom of the slave race; the security and firm establishment of that freedom, and the protection of the newly made freedman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him. It is true that only the Fifteenth Amendment in terms mentions the negro by speaking of his color and his slavery. But it is just as true that each of the other Articles was addressed to the grievances of that race, and designed to remedy them as the Fifteenth."

It is respectfully submitted that the Court here mistook the *occasion* of the *cause*. Coming to a more critical discussion of the Fourteenth Amendment the Court used the following language:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside."

"The first observation we have to make on this clause is, that it puts at rest both the questions which we stated to have been the subject of differences of opinion. It declares that persons may be citizens of the United States without regard to their citizenship of a particular State; and it overturns the Dred Scott decision by making *all persons* born within the United States and subject to its jurisdiction citizens of the United States. That its main purpose was to establish the citizenship of the negro can admit of no doubt. The phrase, 'subject to its jurisdiction,' was intended to exclude from its operation children of ministers, consuls and citizens or subjects of foreign States born within the United States.

"The next observation is more important in view of arguments of counsel in the present case. It is that the distinction between citizenship of the United States, and citizenship of a State is clearly recognized and established. Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter. He must reside within the

State to make him a citizen of it, but it is only necessary that he should be born, or naturalized, in the United States, to be a citizen of the Union.

"It is quite clear then that there is a citizenship of the United States, and a citizenship of a State, which are distinct from each other, and which depend upon different characteristics, or circumstances, in the individual.

"We think this distinction and its explicit recognition in this amendment of great weight in this argument, because the next paragraph of this same section, which is the one mainly relied on by the plaintiffs in error, speaks only of the privileges and immunities of citizens of the United States, and does not speak of those of citizens of the several States. The argument, however, in favor of the plaintiffs rests wholly on the assumption, that the citizenship is the same, and the privileges, and immunities, guaranteed by the clause are the same.

"The language is 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the *United States*.' It is a little remarkable if this clause was intended as a protection to the citizen of a State against the legislative power of his own State, that the words citizen of the State should be left out, when it is so carefully used, and used in contra-distinction to citizens of the United States in the very sentence which precedes it. It is too clear for argument that the change in phraseology was adopted understandingly and with a purpose.

"Of the privileges and immunities of the citizen of the United States, and of the privileges and immunities of the citizen of the State, and what they respectively are, we will presently consider; but we wish to state here that it is only the former which are placed by this clause under the protection of the Federal Constitution, and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the amendment.

"If then there is a difference between the privileges and immunities belonging to a citizen of the United States as such, and those belonging to the citizen of the State as such, the latter must rest for their security and

protection where they have heretofore rested, for they are not embraced by this paragraph of the amendment."

Judge Miller in this quotation from his opinion develops the fact that this amendment certainly did one thing that had not been done before, and that was to make citizens of the United States as such, and this without regard to whether they are also citizens of a State. In other words, the Court holds that there is a citizenship of the United States, and a citizenship of the States, and that each may and does exist, independent of the other; and then the deduction is drawn by the Court, that the amendment was only intended to protect the citizens of the United States, in *their* privileges, and immunities. It is most respectfully but earnestly submitted that this was a misconception of the scope of the amendment, as will be shown later on.

In the further discussion of State citizenship as contradistinguished from United States citizenship the Court said:

"In the Constitution of the United States which superseded the Articles of Confederation, the corresponding provision is found in section Two of the Fourth Article in the following words:

"The citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States.' \* \* \*

"The constitutional provision there alluded to, did not create those rights which it called privileges and immunities of citizens of the United States. It threw around them in that clause no security for the citizen of the State in which they were claimed, and exercised. Nor did it profess to control the power of the State governments, over the rights of its own citizens.

"Its sole purpose was to declare to the several States, that whatever those rights as you grant or establish them to your own citizens, are as you limit or qualify or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the

rights of citizens of other States within your jurisdiction. It would be the vainest sort of learning to attempt to prove by citations of authority, that up to the adoption of the recent amendments, no claim or pretense was set up that those rights depended on the Federal Government for their existence or protection, beyond the very few express limitations which the Federal Constitution imposed upon the States—such for instance as the prohibition against *ex post facto* laws, bills of attainder, and laws impairing the obligation of contracts. But with the exception of these and a few other restrictions the entire domain of the privileges, and immunities, of citizens of the United States as above defined, lay within the constitutional and legislative power of the States, and without that of the Federal Government. Was it the purpose of the Fourteenth Amendment by the simple declaration that no State should make, or enforce any law, which shall abridge the privileges, and immunities, of *citizens of the United States*, to transfer the security and protection of all the civil rights which we have mentioned, from the States, to the Federal Government? And where it is declared that Congress shall have the power to enforce that Article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States?"

It now becomes plain what the Court means by State citizenship, and the "privileges, and immunities," of such; and it is held that they are then under the protection of the States, and that it was not intended that the power of their protection, should be transferred to the Federal Government.

This idea is emphasized by the Court further on where it is said:

"The argument we admit is not always the most conclusive, which is drawn from the consequences, urged against the adoption of a particular construction of an instrument. But when, as in the case before us, these consequences are so serious, so far-reaching and pervading, so great a departure from the struct-

ure and spirit of our institutions; when the effect is to fetter and degrade the State governments by subjecting them to the control on Congress in the exercise of powers heretofore universally conceded to them, of the most ordinary and fundamental character; when in fact it radically changes the whole theory of the relations of the State and Federal Governments to each other, and of both these governments to the people; the argument has a force that is irresistible in the absence of language which expresses such a purpose, too clearly to admit of doubt."

Here then is the majority opinion of that great Court, and while subsequent development through judicial process has confirmed that there is a United States citizenship, and a State citizenship; it has also come to pass that primary citizenship is with the United States, and also that the "privileges, and immunities," of both, are under the protection of the Fourteenth Amendment.

Let us now turn to the dissenting opinions.

Judge Field led the dissent, and in that part of his opinion where he discusses the question of citizenship under the Constitution as it existed prior to the Civil War, he quotes from the speech of Mr. Calhoun of South Carolina in the Senate upon the Force Bill, in 1833, as follows:

"If by a citizen of the United States he means a citizen at large, one whose citizenship extends to the entire geographical limits of the country without having a local citizenship in some State or Territory, a sort of citizen of the world, all I have to say is that such a citizen would be a perfect nondescript; that not a single individual of this description can be found in the entire mass of our population. Notwithstanding all the pomp and display of eloquence on the occasion, every citizen is a citizen of some State or Territory, and as such under an express provision of the Constitution, is entitled to all the privileges, and immunities, of citizens in the several States; and it is in this, and no other sense, that we are citizens of the United States."

And in speaking of the effect of the Dred Scott decision he said:

"In the Dred Scott case this subject of citizenship of the United States was fully and elaborately discussed. The exposition in the opinion of Mr. Justice Curtis has been generally accepted by the profession of the country as the one containing the soundest views of constitutional law. And he held that under the Constitution citizenship of the United States in reference to natives, was dependent upon citizenship in the several States, under their constitutions, and laws."

Further on in his opinion, in discussing the effect of the Fourteenth Amendment, Judge Field said:

"The first clause of the Fourteenth Amendment changes this whole subject, and removes it from the region of discussion and doubt. It recognizes in express terms, if it does not create, citizens of the United States, and it makes their citizenship dependent upon the place of their birth, or the fact of their adoption, and not upon the constitution or laws of any State or condition of their ancestry. A citizen of a State is now only a citizen of the United States, residing in that State. The fundamental rights, privileges and immunities which belong to him as a free man, and a free citizen, now belong to him as a citizen of the United State, and are not dependent upon his citizenship of any State. The exercise of these rights and privileges and the degree of enjoyment received from such exercise, are always more or less affected by the condition and the local institutions of the State or city, or town, where he resides. They are thus affected in the State by the wisdom of its laws, the ability of its officers, the efficiency of its magistrates, the education and morals of its people, and by many other considerations. This is a result which follows from the constitution of society, and can never be avoided, but in no other way can they be affected by the action of the State, or by the residence of the citizen therein. They do not derive their existence from its legislation and cannot be destroyed by its power.



"The amendment does not attempt to confer any new privileges or immunities upon citizens, or to enumerate or define those already existing. It assumes that there are such privileges and immunities which belong of right to the citizens as such, and ordains that they shall not be abridged by State legislation. If this inhibition has no reference to privileges and immunities of this character but only refers, as held by the majority of the Court in their opinion, to such privileges and immunities as were before its adoption specially designated in the Constitution, or necessarily implied as belonging to citizens of the United States, it was a vain and idle enactment which accomplished nothing and most unnecessarily excited Congress and the people on its passage. With privileges, and immunities, thus designated, or implied, no State could ever have interfered by its laws, and no new constitutional provision was required, to inhibit such interference. The supremacy of the Constitution and the laws of the United States, always controlled any State legislation of that character. But if the amendment refers to the natural and inalienable rights which belong to all citizens, the inhibition has a profound significance and consequence."

Beyond question Judge Field was of the opinion that primary citizenship was with the United States, and that, to use his own language, "a citizen of a State is now, only a citizen of the United States, in that State."

Judge Bradley, concurring in the dissenting opinion of Judge Field, and also pronouncing more fully his own views, said:

"First. Is it one of the rights and privileges, of a citizen of the United States, to pursue such civil employment as he may choose to adopt, subject to such legal regulations, as may be prescribed by law?

"Secondly. Is a monopoly, or exclusive right, given to one person to the exclusion of all others, to keep slaughter-houses in a district of nearly 1200 square miles, for the supply of meat for a large city, a reasonable regulation of that employment which the legislature has a right to impose?

"The first of these questions is one of vast importance, and lies at the very foundation of our Government. The question is now settled by the Fourteenth Amendment itself that citizenship of the United States is the primary citizenship in this country; and that State citizenship is secondary and derivative, depending upon citizenship of the United States and the citizen's place of residence. The States have not now, if they ever had, any power to restrict their citizenship to any classes or persons. A citizen of the United States has a perfect constitutional right, to go, and reside, in any State he chooses, and to claim citizenship therein, and an equality of rights with every other citizen; and the whole power of the nation is pledged to sustain him in that right. He is not bound to cringe to any superior or to pray for any act of Congress as a means of enjoying all the rights, and privileges, enjoyed by other citizens. And when the spirit of lawlessness, mob violence, and sectional hate, can be so completely repressed as to give full practical effect to this right, we shall be a happier nation, and a more prosperous one, than we are now. Citizenship of the United States ought to be, and according to the Constitution is, a sure and undoubted title to equal rights, in any and every State in this Union, subject to such regulations as the Legislature may rightfully prescribe. If a man be denied full equality before the law he is denied one of the essential rights of citizenship as a citizen of the United States."

Judge Swayne, concurring in the dissenting opinion of Judge Field, and also speaking for himself, said:

"The First Section of the Fourteenth Amendment is alone involved in the consideration of these cases. No searching analysis is necessary to eliminats its meaning. Its language is intelligible and direct. Nothing can be more transparent. Every word employed has an established signification. There is no room for construction. There is nothing to construe. Elaboration may obscure but can not make clearer the intent, and purpose, sought to be carried out.

"1. Citizens of the States and of the United States are defined.

- "2. It is declared that no State, shall by law abridge the privileges, or immunities, of citizens of the United States.
- "3. That no State shall deprive any person, whether a citizen or not, of life, liberty, or property, without due process of law, nor deny to to any person within its jurisdiction the equal protection of the laws.
- "A citizen of a State is *ipso facto* a citizen of the United States. No one can be the former, without being also the latter; but the latter by losing his residence in one State without acquiring it in another, although he he continues to be the latter, ceases for the time to be the former. The privileges and immunities of a citizen of the United States, include among other things the fundamental rights of life, liberty and property, and also the rights which pertain to him by reason of his membership of the nation. The citizen of a State has the same fundamental rights as a citizen of the United States, and also certain others local in their character arising from his relation to the State, and in addition those which belong to the citizen of the United States, he being in that relation also. There may be thus a double citizenship, each having some rights peculiar to itself. It is only over those which belong to the citizen of the United States that the category here in question throws the shield of its protection"

Thus we have the opinions and counter opinions of these great judges and statesmen, and they may be summarized as follows:

First. All the judges are of the opinion, that the amendment did create a citizenship of the United States as such, and that primary citizenship is with the United States.

Second. But the prevailing opinion as announced by Judge Miller is to the effect that; the amendment was only intended to protect the "privileges, and immunities," of citizens of the United States, leaving the protection of the privileges, and immunities, of the citizens of the States, as they were before the enactment of the amendment.

Third. While the dissenting judges hold that a citizen of a State is also a citizen of the United States, and that his privileges, and immunities, are also under the protection of the amendment.

Further analysis will show that the law is with the dissenting opinion. We have now arrived at a point where it were well enough to make a more critical analysis of the amendment under discussion. Its language is as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges, or immunities, of citizens of the United States; nor shall any State, deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction, the equal protection of its laws."

The first clause had the effect of making citizens of all persons "born, or naturalized," in the United States, and subject to their jurisdiction. In addition to what has been said as to the effect of this clause in creating United States citizenship, its further meaning can be best ascertained from the case of *United States vs. Wong Kim Ark*, 169 U. S., 649.

It was there held that a child born in the United States of Chinese parents, who at the time of birth were subjects of the Emperor of China, but who have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic, or official capacity, under the Emperor of China; became at the time of his birth a citizen of the United States. Under this holding, although persons of the Mongolian race, are not themselves entitled to naturalization under our laws, if they should be permanently domiciled here, their children born within our jurisdiction, are citizens of the United States, and of the State, where they reside, and this is true also of the Malayan race.

Under this rule it would seem to result as one of the evolutionary developments of this amendment, that whenever and wherever, territory may be acquired by our government, and is by the national legislature incorporated into and as a part of the United States, that all persons born therein of parents of whatever race they may be, are citizens of the United States, provided, of course, such parents are not in the diplomatic service of, or acting in any official capacity, of some foreign government or temporarily sojourning in the United States.

The second, third and fourth clauses of the amendment are to the effect that:

"No State shall make or enforce any law, which shall abridge the privileges, or immunities, of citizens of the United States;

"Nor shall any State deprive any person of life, liberty, or property, without due process of law;

"Nor deny to any person within its jurisdiction, the equal protection of the laws."

These three clauses will be here considered together.

As a step in the process of judicial development, the opinion of Judge Field, in the Railroad Tax Cases, reported in 18 Fed. Rep., 385, may be considered as of great value. He said:

"All history shows that a particular grievance suffered by an individual or a class from a defective or oppressive law, or the absence of any law touching the matter, is often the occasion and cause for enactments constitutional or legislative, general in their character, designed to cover cases not merely of the same, but all cases of a similar nature. The wrongs which were supposed to be inflicted upon, or threatened to citizens of the enfranchised race by special legislation, directed against them, moved the framers of the amendment to place in the fundamental law of the nation provisions not merely for the security of those citizens, but to insure to all men, at all times, and at all places, due process of law and

the equal protection of the laws. Oppression of the person, and spoliation of property by any State where thus forbidden, and equality before the law was secured to all. \* \* \* With the adoption of the amendment the powers of the States to oppress any one under any pretense or in any form was forever ended; and hence, therefore, all persons within their jurisdiction could claim equal protection under the laws. And by equal protection is meant equal security to every one in his private rights,—in his right to life, to liberty, to property, and to the pursuit of happiness. It implies not only that the means which the laws afford for such security shall be equally accessible to him, but that no one shall be subject to any greater burdens, or charges, than such as are imposed upon all others under like circumstances. This protection attends every one everywhere, whatever be his position in society, or his association with others either for profit, improvement, or pleasure. It does not leave him because of any social or official position which he may hold, nor because he may belong to a political body, or to a religious society, or be a member of a commercial, manufacturing, or transportation company. It is the shield which the arm of our blessed government holds at all times over every one, man, woman, and child, in all its broad domain, wherever they may go, and in whatever relations they may be placed. No State,—such is the sovereign command of the whole people of the United States—no State shall touch, the life, the liberty or property of any person, however humble his lot or exalted his station, without due process of law; and no State, even with due process of law, shall deny to any one within its jurisdiction the equal protection of the laws.”

In that case the railroads insisted that in taxing their property the State of California discriminated against them, and was attempting to deprive them of their property without due process of law, and was denying to them the equal protection of the laws, contrary to the Fourteenth Amendment.

What is meant by the clause, "that no State shall deny to any person the equal protection of the laws," is well expressed in the opinion of the Federal Supreme Court in the case of *Yick Wo vs. Hopkins*, 118 U. S., 356.

In that case, the City of San Francisco passed an ordinance concerning the regulation of laundries, the effect of which was to discriminate in a cruel and vicious manner against Chinese laundrymen. Certain Chinese, subjects of the Emperor of China, resident in that city, including the plaintiff in this case, attacked this ordinance as being void under the Fourteenth Amendment, because it denied to them the equal protection, of the laws.

The Supreme Court, in its opinion pronouncing this ordinance void, used the following language:

"It appears that both petitioners have complied with every requisite deemed by the law, or by the public officers charged with its administration, necessary for the protection of neighboring property, from fire, or as a precaution against injury to the public health. No reason whatever except the will of the supervisors is assigned, why they should not be permitted to carry on in the accustomed manner, their harmless, and useful occupation, on which they depend for a livelihood. And while this consent of the supervisors is withheld from them, and from two hundred others who have also petitioned, all of whom happen to be Chinese subjects, eighty others not Chinese subjects, are permitted to carry on the same business under similar conditions. The fact of this discrimination is admitted. No reason for it is shown, and the conclusion can not be resisted that no reason for it exists, except hostility to the race, and nationality, to which the petitioners belong, and which in the eye of the law is not justified. The discrimination is therefore illegal, and the public administration which enforces it, is a denial of the equal protection of the laws, and a violation of the Fourteenth Amendment of the Constitution."

In the case of *Holden vs. Hardy*, 169 U. S., 366, the Federal Supreme Court, speaking through Mr. Justice Brown,

undertook to classify the cases to which the amendment was applicable, and in so doing used the following language:

"These cases may be divided generally into two classes:

"*First.* Where a State legislature or a court is alleged to have unjustly discriminated in favor of, or against a particular individual, or class of individuals, as distinguished from the rest of the community, or denied them the benefit of due process of law;

"*Second.* Where the legislature has changed its general system of jurisprudence, by abolishing what had been previously considered necessary, to the proper administration of justice, or protection of the individual.

"Among those of the first class, which for the sake of brevity may be termed unjust discriminations, are those wherein the colored race was alleged to have been denied the right of representation on juries; \* \* \* as well as those wherein the State was charged with oppressing, and unduly discriminating, against persons of the Chinese race; \* \* \* and those wherein it was sought under this Amendment to enforce the right of women to suffrage, and to admission to the learned professions.

"To this class are also referable all those cases wherein the State Courts were alleged to have denied to particular individuals, the benefit of due process of law, secured to them by the statutes of the State; as well as that other large class to be more specifically mentioned hereafter, wherein the State legislature was charged with having transcended its proper police power, in assuming to legislate for the health, or morals, of the community."

The last authoritative pronouncement of the Supreme Court of the United States upon the subject of the application of the amendment was in the case of *Lochner vs. New York*, decided at the December term, 1904, and which has just recently adjourned. The case was this:

The Legislature of New York had passed a statute limiting the employment of persons in bakeries to an average of ten hours per day, and sixty hours per week. This statute was attacked as being contrary to the Four-



teenth Amendment, in that it interfered with the right of contract of citizens of the United States. The Court held that the statute was void, upon the ground that it was an attempt to apply the police law in such a manner as to regulate the right of citizens to contract for themselves, where the employment was not of an unhealthy, or deleterious, or immoral character. The statute was held to be unconstitutional.

Last, but not least, comes the decision of the Supreme Court of Alabama in the case of *Toney vs. State*, decided July 21st, 1904. It is a fact complimentary to the Supreme Court of Alabama, that its decisions are cited in every text book in the American lawyer's library, and by every Court in the land, State and Federal, so that its decision upon this subject is entitled to great respect.

The case was this:

The State of Alabama passed a law, known as the Act of March 1st, 1901, whereby it was made a penal offense for any person, who had contracted in writing to labor for any given time, or who had leased land for any given time, or who had contracted with the party furnishing lands, either to furnish labor, or labor and teams to cultivate the lands, to afterwards, and without the consent of the other party, and without sufficient excuse, leave such other party, or abandon the leased premises or land, or to take employment of a similar nature with another, without giving him notice of the prior contract.

The Supreme Court held this statute void, as contrary to the First Section of the Fourteenth Amendment; and quoting from the case of *Allgeyer vs. Louisiana*, 165 U. S., 578, uses the following language:

"The liberty mentioned in the amendment, means not only the right of the citizen to be free, from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and

work where he will; to earn a livelihood by any lawful calling; to pursue any livelihood or avocation, and for the purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned.'”

Speaking for itself, the Supreme Court of Alabama, in its opinion, said:

“The act in question purports to prohibit the employee and renter, to make contracts of the kind he may have abandoned, except under one of three, alternative conditions. The first of these, the employer in the case of the employee, or the landlord in the case of the renter, could, by withholding his consent, render unavailable; the second—the existence of an excuse for the abandonment, to be judged of by the court—could never be known to be available except at the risk of, and at the end of, a criminal prosecution; the third—that of giving notice of the existing contract—would tend to prevent the making of a similar contract with a new employer or landlord, and this, for reasons which are obvious, if regard be had to the risk of prosecution, to which such new employer or landlord, would be subject, under another act in *pari materia* with his, and approved on the day before the approval of this act.”

The Court further said:

“Because of the restrictions it purports to place on the right to make contracts for employment, and concerning the use and cultivation of land, this act is wholly invalid.”

It thus transpires that by the decisions of the Federal Courts—and those of the State Courts as well could be cited without number to the same effect,—that it is now almost universally held, that the First Section of the Fourteenth Amendment, not only created a citizenship of the United States, but that whatever may be the difference, if any, in the privileges, and immunities, of Federal and State citizenship, the privileges and immunities of

each and both, whatever they may be, are equally and alike protected by this amendment, and further, that no person, whether he be a citizen or not,—but perhaps a member of the excluded and despised Mongolian race—can be deprived of life, liberty, or property, without due process of law, or denied the equal protection of the laws by any State.

No government can be strong that has not the power to protect its citizens and defend and preserve their liberties. The experience of mankind has shown, that an attempt to strengthen the central government has in the past, resulted in the absorption of the liberties of the people; and that, on the other hand, wherever and whenever the central government has become weak, anarchy has resulted.

Prior to the history of the Anglo-Saxon race, no people ever exhibited the capacity for self government, as did the Romans.

The Roman government in its conception and growth was a government of law; the central government, as well as the people, was hedged about by constitutional law, and it could only proceed by law; but the weak point in the fabric was, that in the enactment of law the initiative, and vote, was with the people, from which it resulted that in the days of the republic, the power of government was in an urban community.

So long as the government was in the hands of a responsible citizenship, the liberties of the people were fairly protected; but when the Gracchi installed the Proletariate at the ballot box, Rome in all her aspirations was plunged into a vortex of anarchy, from which the only portal of escape, was government of Empire.

Our idea of a government, whether it be State or national, is a government of law; and while the government rests in the intelligence and patriotism of the people, there must be a power, lodged somewhere, strong enough to enforce the law.

Ours is a Republic or Republics, predicated upon an intelligent, patriotic citizenship; and let us hope that we have solved the problem of a strong, vigorous and powerful central government, which in its turn is so hedged about by law, as that it can, not only not usurp, nor destroy, but that it will protect, and preserve, the liberties of the people.

The franchise of local self government is not only the dearest, but the most sacred right of our people, as expressed in our State governments; but at the same time. while we have States, we have a national government, each acting in its own sphere, and each jealous of its own rights; and when a citizen of Alabama can feel that whether in Louisiana, California, or New York, his privileges, and immunities, and his right to life, to liberty, to property, are protected by the United States, equally with those, of the citizens of every other State, then indeed is he a free man. *Suum cuique tribuere.*

## THE MINISTRY OF THE LAWYER

BY

**W. L. CHAMBERS.**

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*Mr. President and Gentlemen of the Alabama State Bar Association:*

The word is not lightly chosen—the ministry; the service and duty of one who ministers to, who is the servant of, others. For in the last analysis the lawyer is the minister of the State, the servant of the individual. The lawyers of a State are its standing army of peace and business; they uphold and enforce its laws, they protect society from the assaults of violence and the disintegration bred in corruption. It is they who combat those elements and base influences that conspire for the overthrow of republican institutions. It is they, with their accumulated wisdom, their probity, their fidelity to sacred trusts, who defend the homes of the people and their families, their civic and private rights, their liberties, all liberties, nay even civilization itself.

Servant of the man, minister of the State, such service is both noble and ennobling. Let us be proud that we serve, for the work that endures is the work of him who serves. The lords and masters of this world have left their mark in the books of names, and of few does little more than remain than a name. But of the servants, of the men who did things, every land and every time shows the imperishable memorials. Cheops was a master, yet

to all save the student of antiquities he stands but the shadow of a name; on the banks of the Nile stand in eternal stone the work of his servants in that great pyramid from whose tip look forty centuries down. It is no mean thing, my friends, to be a good servant in a good cause.

That servant whose ministry is the most enduring, the servant of the people in its need, will be found to be the lawyer. This is not said in a mere pardonable glorification of our own service and profession. History, as well sacred as profane, opens with the law and lawyer.

Scarcely shall we obtain the full richness of the Pentateuch if we do not recognize that its core and essence lie first in the chapters of the law, the law of God, delivered from Sinai in Exodus, amplified and specialized in Leviticus, codified in Deuteronomy. And all that remains outside this ancient law library we owe in equal sense to the lawyer, for it is his historical gloss, his commentary on the circumstances out of which the law arose, without which, we should hardly understand how it should be applied.

The last few years have brought to our knowledge a code immeasurably older than the law of the Pentateuch, clearly standing to it in the relation of source, the code of Hammurabi. It carries us back to the cold gray dawn of human society in the wonderland of Mesopotamia; yet as we unravel its language we find that in Hammurabi's code the people had a law that feared God and rendered justice to men; the one uniform fundamental law which the people in every age of the world's history have, as an inspiration, imbedded in their codes. In whatever volume of the history of man we may glance, at the earlier pages we find vague accounts of a savage condition, fables of gods, myths of shadowy heroes, and then the law appears, society becomes ordered, and history begins upon terms which we can comprehend and which we can for the first time recognize as sharing in our common freehold of life. Glance in passing at just a few of these landmark names. In the

ancient valley of the Nile we note the law of Menes, a law 6,000 years old, that established the principles which we still recognize as underlying our law of riparian possession. Greece begins its magnificent history with law, the codes of Draco and of Solon. A petty band of Italian robbers became the Roman State, republic, empire, even the empire of the known world, only when it advanced above the other tribes of the peninsula by the possession of the laws of the XII Tables.

In all these codes there are variations of practice, there is the meeting of varied conditions, but in and through them all runs the same great principle—to fear God, to render justice to men. Before these several statements of law, all is savage injustice and brute force; after them come justice to the individual, regard for the paramount rights of the State, respect for precedent, the foothold of orderly society in the doctrine of *stare decisis*. And these laws, these codes which mark the passage from the prehistoric to the historic, are the work of the lawyers as servants of the individual, as ministers of the State. Such service is the highest honor that can attach to a profession that now, as then, is busily employed to bring order out of chaos. From the earliest of these codes down to the current year of grace we shall read history all wrong if we fail to recognize that the whole fabric of society, the edifice of government itself, is weakened or strengthened in proportion to the incompetency or capability, the rascality or honesty, of the men who are to settle estates, to protect the interests of the widow, the orphan, and the incapable; to befriend the weak, to right wrong, to fight injustice and crime in whatever form, whether perpetrated by the beggarly poor or intrenched behind wealth and power. For from the men whose lives are so engaged must the judges of the land be chosen. Because the lawyer is so engaged, because he holds such relations to liberty, to government and to the welfare of mankind, for that reason

is his vision enlarged, his learning broadened; and these inspire his enthusiasm for justice.

It may be objected that these early codes are too remote, that our knowledge of them rests in too general terms to warrant the statement that they have a bearing on our modern life, on the present practice of our profession. Granted that this be so, I would now bring to your attention some conspicuous landmarks of the law we know and practice, and you will see that they span for us the gap between our law and those twelve tables of the Decemvirs. These landmarks are the Constitution of these United States, the foundation of our rights in this great Government; the French "Declaration of the Rights of Man;" Magna Carta, the foundation of the rights of our race which we share with those of our blood who have covered the earth preponderantly with an English-speaking empire; the Digest of Justinian, the foundation of all civil rights of every civilized society.

We are wont to ascribe all the surpassing merit of the Justinian codification of the great Emperor whose name it has perpetuated, and we are too apt to forget that the work arose from conditions best appreciated by the lawyers practising in the courts of the Empire. The work was first conceived and then suggested to him by the College of Lawyers, or in terms more familiar to our present speech, the Bar Association, of Rome; and the spirit which vivifies the whole work is that of the eminent jurisconsult, the immortal Tribonian. How incalculably fortunate has it been for mankind through succeeding centuries, when the light of civilization flickered in the Dark Ages, that there were found in Rome in the years 528-530 ten great lawyers and seventeen eminent jurists so perfectly equipped for the great work that they brought it to an imperishable completion in the incredibly short time of three years. The student of the antiquities of the civil law knows that Justinian was neither the origin-



ator of, nor a collaborator in, the monumental work that immortalizes his name today. This great codification of legal learning, the ripest fruit of the wisdom of a continuous series of court practise from the Laws of the XII Tables, stands today an imperishable monument to those great civilists, to those ancient brethren of the profession who wrought so grandly that their work, after fourteen centuries, challenges for their memories the admiration of civilized mankind. Their work "illuminated the monastery, liberalized the church, opened the mailed hand of feudalism," to rulers taught justice, and to the people their rights. It alone preserved civilization from being lost beyond recall in the darkness of the Middle Ages; and the laws of every civilized nation today, whether statutory or judge-made, are based upon the principles of eternal justice and liberty as established in the Constitutions and Pandects of Justinian. Let the great Emperor have the name, but the honor is the honor of Tribonian and Cratinus and their fellow civilists. That it has lived through all these ages is because it is the work of Imperial Rome, ministers of the State, servants of the liberty of man.

Let the mind pass in a flash of survey over the dark centuries of the wreck of Rome beneath the assaults of her barbarian invaders,—our ancestors, if you will, whose violence was a concomitant condition of their infusion of new blood and fresh life into the decrepit body politic. The law still remained in the Justinian Digest. Violence and rapine sought to repress it. The greed of the conqueror, the brute force of the soldier, the lust for power of the ruler might eclipse it, but they never could blot it out. Inspired by the divine right of liberty, the people arose to demand and to assert successfully their right to the law. They were willing that the King's writ should run, if the King would grant them safe access to the law. Even in our rudest stage we believed in the law and fought to obtain its benefits.

Thus we come to the second of the landmarks we revere, the Great Charter of England, done at Runnymede by Windsor on that June morning in 1215, a seven-century restoration of the liberty of the city codified under the impress of Justinian; a six-century precursor of the supreme liberty of the citizen out of which arose our Constitution. In the memories of too many casual readers of history Magna Carta is alone associated with the proud Barons of England who forced King John at the point of their swords to grant their demands. Good fighting men, men of such sort as could alone win freedom out of these troublous times, we recall the fact that they could not write their names and that the pommels of their sword hilts stamped upon the parchment sheet their arms. Every schoolboy of our race is familiar with this double duty of the sword in Magna Carta,—the point to win freedom, the hilt to seal it when won. We are too prone, however, to forget that on this great occasion the part of the pen was no less important than the sword, even doing double duty. All honor to the brain and patriotism of the sturdy old lawyers who penned, for the royal assent, the peoples' instrument which recognized for the first time the exemption of the subject from arbitrary arrest, which assured him the right of trial by jury, which formulated the right of the individual to the protection of his life, his liberty and his property from unlawful deprivation through arbitrary process. It stands as a palladium of constitutional liberty because it has taken the subject and has established his rights as a citizen. So wisely was that great charter of freedom drawn that it has received unnumbered confirmations and today needs neither amendment nor commentary. It owes its shape, its very living essence, to those great jurists, unrecognized then and unknown now, who drew it. Lawyers they were, ministers of the State; servants of the people. They were not clerks, as it has been the fashion to call them. The

great charter cannot be read today by a lawyer without the conviction that the pen in the hands of great lawyers wrought on that occasion far more valiantly than the sword in the mailed hands of the barons.

Runnymede's Great Charter represents to us the establishment of the civil right of the individual. Far otherwise was it acclaimed by the barons and King's justiciaries to whom it was addressed from that islet in the Thames beneath Windsor's embattled keep. Victory of feudalism though it was, Magna Carta was the death blow to the feudal system. From that day the lord went down and the man went up. In the succeeding centuries of our race we see great public muniments which the lawyers wrested from the throne, every one a victory for the citizens, growing in power even as he grew in the nurture and admonition of the Lord. We need not look into these muniments, we know them by name if no more; here a constitution such as that of Clarendon, here an act such as the Mutiny Act which, year by year to this day keeps Great Britain a constitutional monarchy in name, in fact a democracy; again, a Bill of Rights. And in the same silent course run the charters of the boroughs, such for instance as the royal charter won by London from a monarch's needs which makes it the oldest of the world's present republics; such, for yet further instance, as a host of petty sergeancies, puzzles to us now for the more part, yet each representing a step toward civil liberty.

We need not stop for the incidental details. In six centuries our Great Charter flowered into one yet greater—the Constitution of these United States.

In an instant glance we can reproduce from our own knowledge of our pioneer forefathers a prospect of the social conditions out of which was to spring this new and greater charter. Having fled from ecclesiastical misrule and abuse of the royal prerogative, imbued by precept and example with the spirit of Magna Carta and the principles

of the Roman law, the early settlers of America sought civil and religious liberty. In their early struggles with savage men and adverse nature, in their simple economy and agronomic life, there was for well nigh a century but little need for lawyers, and there were none in any organized or recognized body. During the hundred years of this century of home making the state of society was undergoing a progressive change, trade and commerce were developing, property was rapidly acquiring an exchange value, hamlets were growing into villages, villages expanding into towns. The multitudinous relations which these changes in condition created made lawyers a necessity. From being the counsellors of the people in their expanding and diversified business relations, they became the architects of the State. No student of the earliest days of the profession in America can fail to observe and admire the wisdom, the character and the courageous patriotism of these fathers of the Bar. Their learning came as a marvel and a revelation to the great lawyers and judges of England, and the skill with which they prepared the protest of the Colonies, and the power with which they presented the American case amazed the Parliament and filled Chatham and Burke with a new store of inspiration for their eloquence in the cause of liberty.

When the Colonies had succeeded in throwing off the dominion of monarchy, when it was in order to substitute a permanent system in place of the transition establishment provisionally set going by the Articles of Confederation at the close of hostilities, then it came about, in the momentous conditions which created the exigency, that there were in the Colonies great lawyers equal to the emergency. As the court of Justinian had its juriconsults worthy to compile the Digest, as the camp of the Barons of England had its masters of the law worthy to instil into the Great Charter those principles of liberty which have made the English-speaking people the richest,

the proudest, the most virile, the freest on earth, so the American Colonies, weak and oppressed, were not lacking in men of like metal, great because they served, servants of the people, ministers of the State, their ministry justice. Thus it came to pass that we had in the initial stages of our government men such as Justinian invited, such as John Lackland feared.

The Declaration of Independence, admittedly the greatest state paper ever struck off at a single sitting, was the work of a master of the law, assisted by a committee of which all save one were lawyers. The Constitution of the United States was entirely the work of a committee composed exclusively of lawyers, in its preparation. Furthermore, the convention of 1787 which adopted it was practically an assembly of lawyers, and the only votes cast against its adoption in the convention were the votes of laymen. In fact, the statesmen of the time and public men generally, with the exception of the lawyers, opposed its adoption. In consequence, the indifference of the people at large was such, that this instrument would never have been carried through the conventions of the several States had it not been for the compelling eloquence and the irresistible arguments of lawyers, whose self-sacrifices in the arduous campaigns for the ratification of the Constitution can only be measured by their patriotism.

The scheme of government provided for in the proposed Constitution—the work of the American lawyers from its first rough draft to its final ratification—was, a radical departure from, an inspirational advance upon, any form of government ever established among men, or even thought out in the schools of philosophers whose kingdom is the realm of Utopia. When we reflect that this instrument was the culmination of a tireless struggle for the freedom of the individual, waged by a hardy and determined race of men, who more than a century and a half before had fled to the wilderness from civil offence and religious intolerance,

when we recall such antecedent conditions, we are amazed when we find in the foundation of the law of the new republic, so many and such satisfactory safeguards against the possible evils of unrestrained popular government.

In the first place the states, as states, irrespective of property values, territorial dimension or strength of population, retained equal representation in the national legislature, and thus left it possible for a small minority of the people to defeat legislation demanded by a majority numerically overwhelming. This element of the Constitutional scheme was stoutly resisted by the laymen. It was, they urged, contrary to the theory of popular government and subversive of the principle of individual liberty. But keen lawyers, who reasoned the Constitution upon the convention and upon the country, were able to overcome the opposition, and time has so wholly demonstrated their wisdom that a proposal now to alter this provision would meet an emphatic resistance from one end of the country to the other. Yet this was not only an innovation upon the doctrine of equal rights for which the Colonists fought, it was a feature quite unknown in the constitution of any previous attempt at popular government.

The second feature of the Constitution which I must note in this brief survey is, perhaps, the one for which we of the Bar should cherish most devoutly the memories of those majestic old lawyers,—the creation of the Federal Supreme Court. Here, too, under the guidance, I might almost say the dictation of the lawyers, the American people took a new, distinct and radical departure. They had suffered enough in the past, to assure them of the wisdom of limiting the power of the Executive to subjects specifically granted. In like wisdom they dealt with the Legislative power by placing upon themselves limitations, without which no democracy can long survive its own excesses. Then came about an inspiration, a flash of genius,

the mightiest feat in government-building, when the sages of the Constitution induced the people to submit the acts of the Executive and the Legislative department to the review of a Judicial power, and to provide that there should be no limitation upon its power to annul them. No other government in the world's history has consented that its Executive and its Legislature may be paralyzed by the judgment of a court. Original a century ago, it yet remains unique.

In his latest, and most excellent work, on "Jurisdiction and Procedure of the United States Supreme Court" our distinguished citizen and brother member of this Association, Dr. Hannis Taylor, says: "While judicial tribunals have existed as component parts of other federal systems, the Supreme Court of the United States is the only Court in history that has ever possessed the right to determine finally the validity of a national law."

There is one other notable instance in the history of the struggle of the race for the rights of man, in which the lawyer has taken a part, that entitles him to be mentioned here in connection with the three great events already alluded to that have wrought so conspicuously for the freedom of the race.

We can forget the blood that crimsoned fair France from the Channel to the sea, and even forget the actors, in that carnage of death, for taking the head of Louis XVI, when we recall the inestimable benefits that came to the burden-bearing classes, not only of the French people, but to the "man lower down" throughout Continental Europe, as the logical sequence of the French Revolution. Logical, you ask? Yes, I reply, because the memorable Assembly of 1789, wholly dominated by the representatives of the Commons, of whom more than half were lawyers, had already decreed the freedom of the people by the measure which the French called their "Declaration of the Rights of Man." While this famous instrument is in

large part a repetition, as to substance, of our Declaration of Independence and of the guarantees of our Constitution. yet its special, its revolutionary nature lies in this, that it was the work of a people still subject to a monarch asserting a "divine right" to rule that had been in practice, as well as in principle, *above the people*. This declaration put the people *above* the monarchy, without destroying the form which European nations had then found it difficult to lay aside, and to which the most of them still cling, although every king and emperor in Europe knows that since the American and French Revolutions, with their "Declaration of Independence" and "Rights of Man," the "divine right" to rule has been rapidly passing from them into the hands of the people. Just as the principles of Magna Carta and the guarantees of liberty in the Constitution of the United States have permeated the hearts and possessed the intelligence and made mighty the armies of all English-speaking races, so have the declarations of the French Assembly of 1789 indoctrinated the thought, directed the ambitions, and built up the cause of individual liberty throughout Continental Europe. The great effect of the principles then declared have been recognized in every reform since attempted, and are far more familiar to the struggling German, Austrian, and Italian, than are the Magna Carta or our Declaration of Independence. Ranking in European estimate, at least equally, with these monuments in dignity of purpose, although later in time, this rallying cry of the French lawyers for the rights of man whether noble, bourgeois, or peasant, was, in the world of Continental Europe, equally radical. These French lawyers, not only upon the field of battle and in the streets communes, but in the Assembly, and in the very throne-room of the King, struck the blow which sounded the death-knell of autocratic power among Continental monarchies. May we not indulge the hope that before this year of grace shall close another great race of



people, who have struggled under the crushing burdens of serfdom for centuries, shall exercise the God-given right and might of breaking loose from the dynastic shackles? Surely, there must be men, great and true enough to the divine principles of justice to lead the down-trodden millions of their fellowmen in their struggle for freedom, to work out in Russia, what the English-speaking people did centuries ago, what the French have wrought for themselves, and what the reformers in Germany are slowly but surely accomplishing there, and thus lift themselves to a free level among the self-governing races of the world. I look yet for the appearance of the lawyer in the colossal drama being enacted, with so many tragic features, upon the Muscovite stage; and as freedom to the individual Frenchman arose like a white angel out of the unmentionable horrors of the Revolution, so shall the far cry of the serf hear its long-smothered echo in a Declaration of Rights that even the Czar, in his imperial prison, will hail as his own relief from conditions which have become as intolerable to him as to his people.

The omnipotent hand of the Almighty has written that there is no such thing as "divine right" of kings. The voice of Deity has gone forth among the sons of men and those that rule have heard the declaration that only those shall rule whom the people choose, and whether they call them Kings or Governors, Emperors or Presidents, they govern as the servants and not the masters of the people.

Before passing to the consideration of certain local problems whose settlement rests in great measure upon ourselves, let us glance back along the line of these conspicuous landmarks, in order that we may note the one great evolutionary principle that develops in their course.

Justinian's Digest of the law of Imperial Rome was the giving to all the people of one law.

Magna Carta was the giving to all the people the right of free access to the law.

The American Constitution was the exercise by all the people of the right to make their own law and to surround it with safeguards against even themselves.

The Declaration of the Rights of Man by the French Assembly was the act of the subject people by which the divine right of kings was nullified.

In these distantly separated ages of the world's history, among conditions of the most widely varied sort, there were lawyers ready and worthy to forge these massive links that today, more than all deeds of human wisdom, or mortal prowess hold the world together.

Hitherto in this paper we have followed the development of private right shoulder to shoulder with public right, the citizen and the state advancing to higher ideals of true liberty based upon the principle of equal and precise justice to every one upon whom the law operates, without which there is no law. It has shown itself in the main an orderly movement; for when right has had to rely on its own might to establish a foothold, that step has been planted on ground made holy by the eternal truths for which lawyers in all ages have been the champions.

Having been in all the past on the firing line upon every field of action where individual right and human liberty were the issues, shall we falter or waver in our day when the most precious rights of the individual as granted by our fundamental law, namely, the right of every citizen whatever his race, color, previous nationality or condition of servitude to a "square deal" is so seriously menaced that the utmost powers of the Government, directed by a wise, humane, and fearless President, must be kept continually in operation to preserve the individual from extinction?

I have dwelt at some length upon the four events in history since the dawn of the Christian era, which have exerted the profoundest and most beneficial influences upon the institutions of self-governing peoples. In every instance, on every occasion, the influence and work of lawyers have been present for good, when they have been numerically weakest, then have they put forth their noblest efforts, through argument and eloquence to safeguard the individual, to lighten the burdens of the masses and lift human liberty above its former planes.

I would now, touch as briefly as possible upon two or three subjects of specially serious import to the profession in Alabama, reviewing for a moment the grip the profession holds upon the government, and its power to mould public opinion.

None of us has enjoyed such signal opportunities as came to our brethren of the Justinian Commission, of Magna Charta fame, of the Constitutional Convention, or of the famous French Assembly, but we have none the less, as humble practitioners at the Bar, as judges upon the bench, or in other positions of honor and trust, each within his sphere, had somewhat to do with the enforcement, with the administration, and, in various phases, with the application of those never dying principles of justice which underlie the doctrine of exact justice to all men.

A glance at the federal and state Blue Books furnishes proof that the United States and all of the states separately, with very few exceptions, are governed by lawyers. All the Presidents, with five exceptions have been lawyers, three of the exceptions being distinguished military chieftains—each of whom was careful to surround himself with the ablest representatives of the profession. There has been a surveyor and a tailor president, but the present incumbent of the office has come to his

station—the highest place in the world a man can possibly reach, by the choice of his fellowmen—in possession of an equipment so diversified, that no profession can lay exclusive claims to him. No man ever reached the office who had enjoyed better and more varied opportunities for learning the conditions and the needs of the people. As a student of the public schools, on the athletic field at Harvard, as a Commissioner of Police in the great city of New York, as a Civil Service Commissioner at Washington, as a member of the New York legislature, as a ranchman in the West, as tender on the plains, as a rough-rider, in the camp and on the charge, as the Governor of the greatest state in the Union, as Vice-President and as President—as the son of a “yankee” gentleman and a Southern lady, under all these conditions, in his relations to church and society, in politics, in business and in the home circle he has come in touch with all sorts and conditions of men and problems. Fortunate indeed that at this particular stage in our history, a man with the training of the lawyer, the courage of the warrior, the breadth of wisdom of the statesman, the skillful acumen of the trained diplomat, and the devotion to right of one who loves his fellowman, holds in his hands the reins of the mightiest people the world has ever known, and yet a people whose happiness is most dangerously jeopardized.

Of the seventeen Vice-Presidents, all but three were lawyers. Of the 34 Secretaries of State, 31 were lawyers. Of the 42 Secretaries of the Treasury, 38 were lawyers. Of the 44 Secretaries of War 27 were lawyers. Of the 36 Secretaries of the Navy 23 were lawyers. All but three of the Secretaries of the Interior were lawyers.<sup>1</sup> Considerably more than half of the Postmasters-General, and, of course, all of the Attorneys-General were lawyers. No Congress has ever sat without a majority of lawyers in both branches; and during the period since the Civil War the proportion has been about 70 per cent. lawyers to 30

per cent. of all other professions and callings. The entire federal Judiciary is composed of lawyers, and all the prosecutions are in the hands of lawyers. As to the states, the Governors, with very few exceptions, our own being one, are lawyers; and a majority of the administrative offices in almost all are filled by members of the profession. The condition in this regard applies, in more or less degree, to all of the State legislatures. In recent years all judges of the state supreme courts have been lawyers, and there are today but few exceptions where judicial offices of any grade in any of the states, are held by others than lawyers. In the whole machinery of Government, therefore, from the federal head at Washington, throughout the states and territories, and to the furthestmost parts of the sea, wherever the flag floats, the lawyer has his hand upon the helm of state, whether the Constitution is there to sanction it or not. He makes the law, he provides the administrator, he furnishes the judge, he supplies the prosecutor, he stands ready to defend, *he agitates and moulds public opinion*. There is no place, there is no time, there are no conditions, in government, in politics, in society, in the church, where the lawyer is not a responsible agent. We have not wished to avoid responsibilities in the past, we do not fear the exigent present, and the future holds no problem which we should shrink from meeting or be unable to solve.

Following the formation of the republic, which had its birth contemporaneously with the repudiation of monarchical government, a few men of dominant influence and hereditary prestige controlled, for a period the politics, and largely the government of the country. But the lawyers were not slow to realize that the principles they had embedded so securely in the Declaration of Independence, and in the Constitution, were in danger of practical nullification if government by aristocracy was permitted. Having thrown off the kingly power, they were deter-

mined that government for the people should be by the people; and so the profession has unremittingly resisted the encroachments of any class, whether asserting their right to control upon the basis of family lineage, accumulated wealth, literary culture, the institution of human slavery, or any other institution which distinguished the ruling classes from the masses of the people. The fundamental idea being the equal rights of every individual before the law, and exact justice to every one upon whom the law was intended to operate, the lawyers of those earlier times, with instinctive prescience of the future greatness of the Republic, determined that the government must for all time reside in the hands of representatives, whose commission to make and administer law depended upon the will of the people, in whom must necessarily abide the ultimate power of such a democracy as the Constitution of the United States contemplated. While our fathers of the profession had a hard fight to restrain the encroachment of the aristocratic classes, if we would maintain our position as consuls of the people, we will have to deal with plutocratic influences far more dangerous than any aristocracy of the past. The colossal combinations of wealth exceeding the dreams of the most frenzied financiers portend even greater evils than the imperialism of kingly government. A money oligarchy in place of a class aristocracy, and neither a toss up better, so far as the people are concerned, than a monarchy.

The incorporated capital of the country today exceeds the entire wealth of the nation at the beginning of the Civil War. There is a single corporation with ramifications coterminous with the country whose capital stock and bond issues exceed the aggregate securities of all other corporations of the entire country engaged in similar fields of operation. If the development of this gigantic corporation has been possible in one generation,

what may not be feared in the next, unless some influence powerful enough arises throughout the land to check the ominous tendency? I have not the time, and this is not occasion, to go into the exposition of the character and operations of these great corporations.

We may consider for a moment only one phase of its danger, from a sociological point of view. The proprietor of more than half of the primary securities of this corporation, those that are calculated never to fail in dividends, with an income of thirty millions a year, is giving that each year to the schools and colleges, and to towns and villages for the establishment of libraries, in amounts varying from a thousand to a million or more of dollars, according to the size of the place or institution; and the gift always consists of securities in this corporation. The income supplying a fresh gift fund every ninety days, the process can go on indefinitely without diminution of the principal, and will doubtless go on, until the boys and girls of every town and village throughout the length and breadth of this land become the beneficiaries of institutions founded upon the securities of a corporation composed two-thirds of water, and the remaining third saturated with the sweat of the toiling thousands whose unrequited labor cries out for "a square deal." Who can adequately estimate the effect of this insidious influence upon the youth of the future?

Fortunately for us the consolidations of capital as represented in large corporations have not reached any alarming proportions in Alabama as yet. It is no stretch of fancy, however, to predict that unless a decided restraint is put upon the tendency to enormous consolidations of capital and corporations into great trusts, that Alabama will be the next field for exploiting this peculiar and dangerous kind of financing. In the central and northern portions of our wonderful commonwealth there exists a

wealth of mineral, of coal and iron, the equal of which we believe has never been found anywhere else in the same compass of territory on the globe. I recently heard one of the most careful students of such subjects, a man of great financial knowledge, whose judgment commands the highest respect among all classes, and who has no mean chance of being the next President of the United States, say that the greatest iron and steel producing centre in the world would be in that region. If corporations, as they now exist are restricted, in their development, to the lines of legitimate business expansion, and there shall be interdicted by law such combinations of corporate enterprises as would interfere with the efforts of the individual, along the same lines of competitive enterprise, this grand commonwealth, in another generation, will reach a state of prosperity that our wildest fancies have never pictured. The consolidation of the various iron and steel and coal enterprises of the state at the present time, embracing the half dozen largest corporations in the State, is such a tempting enterprise to the high rolling promoter, that nothing short of prohibitory law will prevent its accomplishment within a few years. In recent months the effort to bring about such a consolidation failed only because the "rake-off" was not sufficient to satisfy certain interests connected with the deal. If it had been accomplished, we would today have one tremendous corporation with issues of stock, common, preferred and otherwise, bonds, first, second and otherwise, in the aggregate amounting to more than the present taxable values of all real property in the State of Alabama, dominated and controlled absolutely by some person in New York, drawing a salary of \$100,000 or more per annum. Who will deny that such a corporation, if at present existent, would either fix the price of every ton of coal, of every pound of iron, mined and manufactured by the small corporations and the individual operators in the State of Alabama, in



such a way as to compel them either to sell to the great corporations at a figure under the actual market value, or else force them out of business entirely? We may as well face these conditions before they reach us. They have attained their fruition in the northern and eastern sections of our country, and will be exciting issues before the people in the next national election. If we can anticipate the calamity and prevent the conditions which the insatiable appetite of capital is sure to beget, the lawyers of Alabama will perform another signal service, which, will establish clearer than ever their proud title to guardianship of the people's rights. I am well aware that in this audience, there are many who are the employed servants of corporations. Neither are lawyers to be censured for such service. In accepting retainers from corporations the lawyer is actuated by considerations not less deserving, perhaps, than the clergyman who accepts a call from a congregation that recognizes his ability and is ready to offer him a salary commensurate with that service. There is not a doctor who would not prefer John D. Rockefeller as a patient than the man that handles a pick in the mine, or a shovel in the street. Lawyers should not, therefore, be held up to execration because they are in the employ of great corporations, or of wealthy men. It is certain that they do not receive more money than they are worth, and every man in this broad land, whether lawyer or day laborer, is entitled to earn every dollar that his time and his brains can command in an honest pursuit. But the lawyer as adviser to the millionaire and counselor to the great corporations can serve his employer best by having always a mind to conserve the welfare of the people upon whose labor and patronage these corporate interests depend for their existence and prosperity. And it is in these positions of trust and confidence that our ablest and best paid brethren can render services to both classes, no less signal than in the

halls of legislation, upon the bench, or in the executive chair.

Confining this discussion to one other subject, peculiarly within our ministry, I have thought the occasion could not be better improved than in a "heart to heart" talk about the administration of criminal law, or more truthfully speaking, the failure of its administration, especially in its bearings upon the future of the negro in our midst.

The ethnic prejudices eternally springing from the presence of two races so radically distinct as the Caucasian and the Negro, and the ever constant unobliterable social antagonisms due in large measure to the previous relations of the two races, the one bond-man to the other, make the administration of criminal law one of the most delicate the profession has ever been responsible for.

Under any conditions criminal law is an extremely rough engine, which has to be worked with great caution, and this caution is intensely augmented when the social question bulks all others out of the way. The peculiar conditions of our environment impress the truth upon us that enlightened public opinion, as an instrument for the prevention of vice and the promotion of virtue, is no less essential than the instrument of law. The use of each is subject, however, to well defined limitations; for all the attempts to make men good either by legislative action or judicial discipline without the supporting force of a sound public opinion have always ended disastrously. Public opinion has ever been a potent influence in the administration of criminal law, or rather, if I may be permitted to coin a term, disciplinary law; and the experience of the profession in the South since the Civil War, which precipitated conditions that threatened social anarchy, attests the fact that the administration of criminal law (inefficient as it has been) would have been hopelessly futile except for the controlling influence of moral public opinion.

The egregious blunder of thrusting full citizenship indiscriminately upon all the slave population, projected conditions that made instant equality, even in political relations impracticable. Whether civil and political relations could eventually be developed and sustained on terms of equality, the people of the South were willing should be attempted, and accordingly accepted the situation, as they understood the purposes and policies of the government then to be, with remarkable grace and promptness. But any relation of the races approximating or suggesting social equality was, from the first, a physiological impossibility. The battles that have been fought since '65 for social and racial purity in the South have been no less heroic than those that ended so gloriously for American valor at Appomatox. Equally true is it that the bravest, best battle yet waged for the negro race is the one being fought for social and racial purity of his people under the leadership of Dr. Booker Washington. May God strengthen his arm, replenish his wisdom, and bless him with yet greater eloquence through lengthening years of a useful life that he may, as Moses did from Nebo's top, look down upon a race redeemed, not alone from human bondage to freedom but from depravity to purity, a race boasting, above everything else, in the purity of its blood.

In this stupendous struggle "up from slavery," shackled, as he has been, by conditions more disheartening to his high aspirations than the shackles that bound the ancestors of his race to a condition of servitude, let him have not only our sympathies but the consistent efforts of a superior race, in the full enjoyment of a precious civilization, born and nourished of Magna Carta, ripened under Constitutional liberty. In thus doing, we shall be carrying, in the noblest possible way, our golden share of the white man's burden. Shame upon the man who would not lift his fellow up, who would not extend a helping hand to the

man at the bottom, whose burdens of the flesh have brutalized his soul, and well nigh extinguished the spark of intelligence that has flickered so dimly in the centuries through which his humble ancestors have toiled. A thousand times more shame upon the race, whose bondmen these people were, whose faithful labor made our Southland to blossom as no garden on earth ever blossomed before, filled the exchequers of our fathers with overflowing gold, and were, themselves, essential constituents of an aristocracy, rivalling in culture and gentleness any known in history. Acquiring a sudden freedom, for which they were wholly unprepared, left penniless by a government, whose agents misled them with false hopes, possessing a manhood franchise as dangerous to themselves, to say nothing of others, as dynamite in the hands of children, they were too ignorant susceptible and elated to snatch anything but evil out of their anomalous situation.

Unfortunately three false conditions were instant: The negro himself believed the proclamation of President Lincoln followed by the downfall of the Confederacy had not only made him a freeman, but had clothed him with all the rights of an anciently free and superior race, and fitted him for the immediate and highest enjoyment of the prerogatives of citizenship, for which the Anglo-Saxon had been battling through ten centuries. The politicians of the North, and it may be the people generally in that section, knowing the negro overestimated his capacity and qualifications for citizenship, were yet urgent that he should be encouraged, in the fullest possible exercise of these prerogatives, believing that he would speedily fit himself for the position in government formerly filled by the whites, who possessed all the intelligence and what there was of wealth. The Southern politicians, who, to a large extent represented the sentiment of the people of the South, believed that the negro had reached his zenith in

slavery, and that there was no future for him above the dead level of the "Man With The Hoe;" that as a race, advancement was nothing more than a dream, never to be realized.

Of the three, the negro was his own poorest interpreter, and after two score years of checkered experience, is a wiser, although I believe, not a happier man than when he left "the little log cabin in the lane" for the boundless roamings of his freedom. Of the other two, each was, perhaps, as much as the other in error. That the negro has shown a capacity for advancement in industrial, educational and moral spheres is attested by instances so abundant that it would insult the intelligence of this audience to enumerate even the more conspicuous. The list of divines, educators, lawyers, doctors, merchants, manufacturers, planters, farmers, builders, and even office holders, who have reached varying stages of success, is by every token most creditable. That so much less has resulted than was expected of the race by the people of the North, has been a severe disappointment. But it has quickened public thought in that section to renewed interest in behalf of these unfortunate people, of altogether different character, however, from that which operated on political lines a generation ago. That so much more has resulted than the Southern people believed possible may be a disappointment to a purblind few, but to the great body of thinking people throughout the South these well authenticated instances of moral elevation, educational attainment, and business success, rare and insignificant as they may be, compared to the still ignorant, unthrifty masses, are the bright lines along the dark horizon that demonstrate a racial virility which stirs a healthful and pleasurable hope in the breast of the truest men of the South.

Shall we have a hand, I ask, in further lifting these millions up to a state where each man shall stand for a man's

share in the material prosperity of the country, or shall we put ourselves in the way of their own feeble efforts? I answer yes to the first and as emphatically no, to the second of these questions, and pray that the Allwise God may direct the white race, of the South especially, in every endeavor, of which we are capable, toward the accomplishment of results that must establish the prosperity and happiness, or bring disaster and misery to two races whose destiny is to be worked out upon a soil which neither will ever desert. Do you ask how we can help? I answer, in a thousand ways; but as each must largely determine for himself the way as opportunity arises. I would suggest only a few guides.

1. By wishing them well.
2. By realizing that others have a right to know something about the subject, and that the "negro problem" (if there be any) is not our monopoly.
3. By treating them honestly, and demanding for them a "square deal" in all business transactions.
4. By sharing fairly with them all the benefits of public revenue.
5. By guaranteeing to them a legitimate participation in all public utilities under conditions that segregate the races socially, with the slightest possible offense to the sensibilities of each.
6. By helping them personally in right living—exempling them in personal purity.
7. By compelling, a speedy trial and death punishment of men who forcibly violate the chastity of women, and limiting appeals in such cases to the discretion of the trial judge.
8. By clothing trial courts with power to punish with disfranchisement anyone who, by violence, has usurped or attempted to usurp their jurisdiction in criminal cases.
9. By demanding the administration of the criminal laws and the enforcement of their penalties with becoming celerity, rigid effectiveness and absolute impartiality.

Since the preparation of this paper was begun I have read a newspaper report of a notable address delivered by Secretary of War Taft to the graduating law class of Yale University. That this distinguished representative of the government should have selected the administration of criminal law as his theme, at a time when there were public and international questions of extraordinary import which might have afforded entertaining and appropriately instructive subjects for such an occasion, emphasizes, in a stronger sense than I can otherwise express it, the supreme and imminent importance of the subject he selected for discussion. Perhaps none of our highest officials possesses a more intimate knowledge of the criminal laws, especially of those administered in federal courts, than Judge Taft, and certainly none would be more careful than he in criticising them, or their administration. Yet we hear him exposing the defects in our criminal laws, and hurling invectives in thunderous terms at the "lax," "impartial," "perfunctory" and oftentimes "disgraceful" way in which they are administered by the courts and juries throughout the country. I also derived great instruction and pleasure, if it is possible to get pleasure from the study of criminology, from a recent article by Judge Thomas of the City Court of Montgomery, whose exhaustive array of statistics and masterful use of them, should not only arrest public attention, but arouse the profound interest, at least, of the lawyers of Alabama. I assume that every member of this Association has read Judge Thomas' article, with the care it deserves, and, that every one will read the merciless exposition of our criminal system as portrayed in the eloquent appeal for a better administration of the criminal laws by Judge Taft.

If I shall accomplish nothing more than to excite a zealous interest in this greatest of immediate subjects to the people of Alabama, I shall count this as one of the best ministries of my professional life. The bar and people of Alabama owe Judge Thomas a debt, and the people of

the nation owe Judge Taft a debt, for the work they have wrought in this broad field of criminal jurisprudence and administration, which neither can easily overpay.

As heretofore remarked, the administration of criminal law is of peculiar interest to the people of the South, not less so to one than the other race, both of whom, notwithstanding the fancies of the theorists, will continue to dwell here. If the negro is ever to attain the full stature of a law-respecting and law-abiding citizen of the standard required by twentieth century civilization, and to be worthy of the privileges of complete citizenship, we should be scrupulously careful that the laws under which his civil rights are defined, are most sacredly administered. Our code of criminal laws is by no means perfect, but it is a fact well known to the profession, lamentable as it may be, that the revel of crime which has made every law-abiding man sick to despair during recent years, is due more to their lax, tardy and indifferent enforcement by trial courts and juries, than to defects in the laws themselves. The disregard of criminal laws which is well nigh general among certain classes, is not ascribable so much either to the badness of the laws or the badness of the people who violate them, as to the failure of the courts and juries to perform their constitutional functions. The most serious trouble seems to be that the judges of our trial courts have surrendered too large a share of their power to the jury, and, as Judge Taft so wisely and strongly says, the function of the judge is "often limited to that of the moderator in a religious assembly." The counsel for the defence relying on the diminished power of the court, creates, by dramatic art, and by harping on the important or unimportant details, a false atmosphere in the court room, which the judge is powerless to dispel, and under the hypnotic influence of which, the advocate is able to lead the jurors to vote for a verdict, which, after all the excitement of the trial has passed away, they are unable to support, as men."



As a result of this surrender of power to the jury, more than to any other cause, in the opinion of those who have deeply studied the subject, there have been during the last twenty years, in the United States, 131,951 murders and homicides, with only 2,286 executions. There were in the year 1885, 1,808 murders, while in 1904 the number had increased to 8,482. In 1885 there were 108 executions. The executions in 1904 were 116. The proportion in 1885 was one conviction to seventeen indictments for murder; in 1904 only one in seventy-three. These figures tell a horrid story. As murder increases, so will all offences of the felony class, and felonies will continue to multiply in even greater proportion until the courts reassert their former power and the criminal laws are enforced with more uniformity, impartiality and with greater severity. While the surrender of his power by the judge over the jury and laxity and indifference of jury enforcement are chiefly responsible, in my judgment, for these conditions, the disgraceful results are not chargeable entirely to these causes. Legislatures, under the impulse of a misconceived idea of individual freedom, have gone too far many times in the interest of liberty, and have encouraged the jury, in the exercise of a power, beyond the control of the court, in the trial of criminal cases, and have extended the right of appeal in criminal cases from the original trial court, until practically all cases can now, by successive appeals, reach the court of final resort.

While the criminal laws of the United States and England are remarkably similar, being founded upon the same general principles, their administration is so dissimilar that we hardly recognize the two codes as substantially the same. In England the judges, from the first, assumed (not without right), and continue to maintain, the part inherited by them from the common law system, and that part has been, as Judge Taft explains it, "first, the retention of complete control over the method by

which counsel try the case, restraining them to the points at issue, and, second, the power to aid the jury by advising them how to consider the evidence, and expressing opinions upon the evidence." The power of the English judge extends even beyond the trial of the case, or rather, it is so exclusive that he may, unless he deems certain questions of law of sufficient importance and doubt, to reserve them to a court of appeals, refuse to grant an appeal. Contrasting these powers of the English judge of the court of first trial, with the slender powers exercised by judges in our trial courts, it is not difficult to find the reason why felonies are so much more numerous under our system than the English. Homicides in England during the last twenty years have actually diminished, while in the United States they have increased five-fold, the explanation being found in the fact that the convictions for murder in the United States have dwindled during twenty years, from six per cent., (miserably low) to one and a half per cent., (disgracefully low) while in England, the percentage of convictions has steadily increased, the American system constantly encouraging the increase of homicide, while the English system represses. We need not go further into statistics, for they show that the same conditions apply to crimes of all grades.

These are matters which I commend to you, brethren of the bar of my own State, for it is a function of our ministry to lead public thought into the right way. "Servant of the individual, but minister of the State," is a string on which I have harped all through this address, a dual function, a double duty, yet one in its obligation upon us. The lawyer is a sworn minister of justice, an officer of the court, and therefore of the State, a servant of the people and a trustee of their sacred rights. It is a low and altogether unworthy view that a lawyer takes of his office and of his trusteeship when he assumes that it is no concern of his if the public is ignorant of its duty of subordi-

nation to the restrictions of organized society; that he is not concerned with breaches of law, existing or threatened, except as he may be called upon to prosecute or to defend in the courts for a compensation to be paid him. If any hold such a thought he is unworthy to hold the license which should ever be his certificate of honor. I would emphasize the importance of the lawyer recognizing his true position in civil society as a teacher and a leader, and his duty to support the Constitution and the laws by making known their true import, when the opportunity to do so is distinctly presented and the need is obvious, and by impressing upon the minds of unthinking people "the vital truth that liberty is born of law and not of license."

Of such is the ministry of the lawyer. His duty is with the right, the right of the individual, the right of society. To not every member of the profession can arise the opportunity to collaborate in a digest of the laws of an empire, to assist in drafting a concession of liberty wrested from a hostile ruler, to draw out the instrument that shall proclaim liberty to all the world. But to each is it possible to do well his duty as a servant of the individual, never forgetting that he is a minister of justice.

I feel that I cannot more fittingly close this paper than by giving you a rough translation from the great Ulpian:

"We may properly be called the Priests of Jurisprudence, for we are the votaries of Justice and profess knowledge of the good and the equitable, separating equity from inequity, drawing a line of distinction between what is lawful and what is against law, desiring to make men good not only by fear of punishment, but also by the incitement of reward and, if I am not deceived, cultivating true philosophy and not a mere sham of it."

# OUR RAILROAD COMMISSION AS A POLITICAL FACTOR

BY

**LAWRENCE COOPER.**

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*Mr. President and Gentlemen of the Bar Association:*

Industrial inquiries and the internal management of commercial affairs rarely come under political review. The prosperity of the country and magnified results in legitimate business effort, shows an escape from this unfortunate thralldom. The true conception of politics, is good government. The thing which is best for material success, and which serves as a protection against evil should always be thoroughly discussed and understood. It is the duty of the citizen to become acquainted with all great questions, and his personal influence should be thrown for the preservation of the best principles of government.

These generalities are mere platitudes, and are axiomatic of the politicians, because confessedly, he must be right, whether he has shifted from his position of yesterday, or whether he maintains his creed with unyielding fervor. Frequently in the political field, it is difficult to generate an issue. There should always exist two great political parties, fairly well divided, and neither so powerful that the other will permit a default in maintaining its position. This is essential, for so sure as there is an

overwhelming majority, the minority will languish and fall into inactivity.

The past decade is an open demonstration of this fact. The Tariff, national and international, seethed in hot fury and in turbulent dismay, and this great country survived, and its principles remained unshattered. The establishment of the Grange, and its growth into the Ocala platform knocked at the door of political habitation with marked vehemence, and turned away into oblivion. Finances seized us but shortly ago with frenzy, and prophecies based upon failure, were clothed in the most calamitous predictions. The shock of defeat left us on the battle line; and strange as it may appear, instead of disaster, a rich harvest spreading plenty, caused a number of our best people to advocate the destruction of the Lord's bounty. The subject grew so wide-spread, that legislation was threatened to require the planting of less cotton so that the same bountiful provision would be cut off, and well-nigh it became the shibboleth for the legislative candidate. Scarcely less than criminal was the effort to stamp out this great supply upon which we so largely depend. This effort is but a manifestation of one of the weak characteristics of our human nature.

The Hotel Corporation, is a legal entity in which the entire traveling public is interested when rates are fixed. A guest occasionally feels indignant over the enormity of the figures presented to him for payment. He inwardly desires a commission to regulate such charges, but the proper stage of aggravation, when the legislature is sought, has not yet arrived. Telegraph companies have felt the throb of the legislative machine and telephone companies are the brunt of the ward politician. Gas—the article we use for light,—would readily enter the arena if there were any division of sentiment. The absence of any difference of opinion is attributable to the supposed uniformity of the bill of charges, without regard to rates

or the amount consumed, and is based upon that law which we call "general average."

A few years ago, we learned that the railroads needed regulation, and now indeed, we find that the rates or charges are sought to be fixed by those who do not own the property, and who have no interest in its preservation. To this subject, may I invite your attention briefly? I have no opinion to express on this occasion as to the desirability of a railroad commission. We have this organization in our State Directory, and there will I leave it. The members are elected by the people, and this I will not attempt to disturb. I would stem, however, if possible, the clamor made upon the hustings, and through the press, for the regulation of rates by force of power, rather than by equitable adjustment. There is no place in politics for the determination of proper charges for a given service. The regulation of charges is essentially judicial. The railroad is a public servant, and the public is entitled to a service safe and speedy, and reasonable in its demands; and the carrier is likewise entitled to be paid a rate, reasonably remunerative, based upon the investment, cost of maintenance and earning power. It is unfortunate that this question is canvassed where passions run high, where prejudices abound, and where personal grievances are controlling. The rights of citizens as between themselves, are settled in a different forum. The carrier is an aggregation of citizens, and the rights of this carrier against the citizen, or the rights of the citizen against the carrier should be submitted to judicial investigation.

It may be said that the present law has this purpose in view. So it has! Section 10, of the Act, approved February 28, 1903, provides for a revision of Tariff rates, using judicial words of expression. This statute reads:

"It is the duty of the railroad commissioners to consider and carefully revise all tariffs of charges for trans-

portation made by any person or corporation owning or operating a railroad in this state; and if, in their judgment, any such charge is more than just compensation for the service for which it is proposed to be made, or amounts to unjust discrimination against any person, locality, or corporation, they shall notify the party making the same of the changes necessary to reduce the rate to just compensation, or to avoid unjust discrimination; and when such changes are made, or when none are deemed proper and expedient, they shall append to the tariff of charges a certificate of their approval; and they shall exercise a watchful and careful supervision over all tariffs and their operation, and revise the same from time to time, as justice to the public and the railroads may require, and increase and reduce any of the rates, as experience and business operations may show to be just; but in revising the tariff, the commissioners shall take into consideration the nature of the service to be performed, the entire business of the railroad, and its earnings from passengers and other traffic, and so revise the same as to allow a fair and just return on the value of the railroad, its appurtenances and equipments."

Therefore, it will be readily seen that the commissioners, if in their judgment, any charge is more than just compensation for the service for which it is proposed to be made, or amounts to unjust discrimination against any person, locality or corporation, shall notify the party making the same, of the changes necessary to reduce the rate to just compensation, or to avoid unjust discrimination. In revising the tariff, the commissioners are required to take into consideration the nature of the service to be performed, the entire business of the railroad and its earnings, and then so revise the tariff as to allow a just and fair return on the value of the railroad, its appurtenances and equipments. The legal appliances for the hearing and determination of complaints whereby a proper rate is sought to be established, are scarcely adequate, yet the procedure is upon judicial lines, and the effort of fairness is apparent.

A serious objection to the general law lies in the fact, that ostensibly it is open, fair and just, while it is practically impossible of equitable execution by reason of the limitation placed upon the membership of the commission. Section 3 of the Act, approved February 28th, 1903, provides:

“No person or persons owning any stock in any railroad corporation, or in the employment of a railroad corporation, or any person owning or operating a railroad in this state, shall be eligible to the office of railroad commissioner.”

This statute is practically a prohibition against any person having knowledge of railroad affairs, becoming a member of the railroad commission,—the body charged with the duty of fixing rates. Inasmuch as the commission in the revision of rates, should act as experience and business operations may show to be just, it is difficult to conceive the competency of a man who has no knowledge of the operation of the railroad. If adjustment of these charges are to be made, as experience may demand, an inexperienced man,—a man without practical information, is manifestly incompetent to fulfil the duties of this important office.

Revising rates in accordance with the business operations of the railroad, surely requires the services of a person who has some knowledge of such business operations. A person operating a railroad, is ineligible to fill this peculiar position, although by reason of his experience he is particularly qualified. In order that he may possess the qualifications for passing on these questions, he must be a retired railroad man,—a rare personage in this commonwealth, if any there be.

It is an incongruous condition to disqualify the person most competent to discharge the duties of the office, and solve the difficult problem of tariff rates, which is so important to both parties in interest, as well as the territory in-



volved. Having thus vested the members of the commission with quasi judicial power, do we understand that this statute means to carry the suspicion that the influence of the railroad over the official would pervert justice? If a commissioner, who is a railroad man is assumed to be incapable of dealing justly, would not a like suspicion rest upon the pronounced enemy of the railroad—on the advocate of a system of rates which the railroad declared to be not only harsh and inequitable, but destructive in its ultimate conclusion? The lawyer who is elected to the office of judge, is never supposed to be incompetent to determine questions of litigation arising between lawyer and layman. The judge is supposed to be learned in the law, a man of experience in legal affairs, and therefore, competent. Any other class of persons is altogether ineligible.

This parallel indicates a discrimination in the rating of eligibility; and it would seem to be reasonable that a man with practical knowledge should be a member of the commission in view of the duties devolving upon this commission under the statutes of this state. A man of trade affairs, conversant with commercial relations, and a person learned in the law and of business acumen, might constitute the remaining membership. The board thus composed in its personnel, would be well adapted for the proper adjustment of the tariff in accordance with the intent of the statute.

Readily this suggestion is met with the statement that a like provision limiting the qualifications of the membership is found in the Act of Congress, approved February the 4th, 1887, and usually known as the Interstate Commerce Act. Doubtless our statute is modelled in a way, upon this Act of Congress, yet it is very much broader, and imposes duties upon the commission, and vests it with powers, which are not found in the Interstate Commerce Act. The Interstate Commission applies to the courts under the terms of the Act, not only for the

enforcement of its orders, but for the ultimate determination of the equality of rates, or their discrimination as against shippers.

Under the state statute, this power, as we have seen, is vested in the commission. In my judgment therefore, there is a manifest distinction between the state and federal statutes; and the state statute vesting in the commission the power to determine and fix rates would seem to require the service of one who is experienced and fully competent to judge, of the intricate problem.

There are reputed existing evils which can only be rightfully corrected by a commission entirely free from partisanship. Some of these wrongs are said to be flagrant, and if none other existed, they could be remedied by simple force of power, wherever it might be reposed. But, the subject admits of no such narrow consideration, and it would not be consistent with a system of laws conceived for the common good, and administrated as a question of economics.

The subject is commercial, and pertains to the industrial success of the state, its citizens and the carrier. Apparently it is wrong to permit a rate for the carriage of an article the distance of fifty miles, within the borders of the state, in excess of the rate for one hundred miles, and a rate equal to the value of the article of shipment is confiscation. Discriminating rebates are egregiously wrong. If it be true that rebates in tariff rates are allowed one section, where full rates are charged in a competing territory, or if a rebate is given to one manufacturing enterprise and denied to another, a wrong of most dangerous tendency exists, which should be thwarted by such power as the exigencies of the case demand. If such a system prevailed, disaster and ruin would necessarily follow.

Large commercial concerns locate their plants having in view the natural product of the country and existing

shipping facilities. Their success depends upon the volume of business, and in order to secure it, earnings are more or less limited in percentage. The profit lies in the quantity sold, and any material favoritism by the carrier to one shipper which is withheld from his neighbor, similarly situated, means the overthrow of the latter. The courts as organized, are doubtless adequate in power and procedure to obviate this condition. If not, certainly tribunals could be created with full jurisdiction. Sections 2 and 3 of the Act of Congress, approved February the 4th, 1887, are directed to the correction of this evil, but the purpose may be said to be limited to the enforcement of equality between shippers over the same line, and to prohibit any rebate by whatever device it may be attempted. Whether this statute should include competing lines, might be worthy of great consideration.

With this Act, it is not my purpose to deal, neither do I attempt any construction of the statute. The interpretation by the Courts would seem to leave well established the idea, that the fixing of rates requires skill, experience, fair judgment and non-partisanship. Can we not presume, therefore, that questions involving alleged hardships of this extreme nature, would likely result in a popular vote, to serious injury? If determined, as the present commission law requires, through a watchful and careful supervision, "and as experience and business operations may show to be just," all existing evils could be easily avoided.

All public questions determined by an expression at the ballot box, are quasi political. Immediately the right or the wrong of the proposition, is subject to the personal view of the majority. While we recognize the righteousness of our plan of government through the elective franchise, no one will contend that economic inquiries, and questions essentially judicial, are within the range of this method of determination.

In our last general election, a freak, either curious or natural, as you may view it, was exhibited by a number of our most intelligent people. The views entertained by certain candidates for the Supreme Bench on the question of osteopathy determined their availability, if not their qualifications for this high office, by many of our physicians learned in the most progressive of all the sciences. At different points at the polls this issue was strenuously fought; and strange fancy it would be, for a lawyer to select his family physician because he favored the establishment of a court which the lawyer advocated. A candidate for judicial office who admired fine live stock, and who passed his leisure moments with his pipe, ancient in delicious perfume, at the village livery stable, would be sure of all the votes of that classical environment. A scholar, struggling through many weary years over the Dative Case, and its derivatives, would be a trifle awkward at the throttle of a locomotive, and passengers possibly would feel a sense of insecurity. The dignified justice of the peace, omniscient in his sphere, would appear unusually wise and sedate, in a discussion of barycentric calculus. We might indulge in further simile, but such references only show a common weakness, and that a man is his best in the profession or avocation of his daily life.

In the recent election, the issue presented to the people was the revision of railroad tariff rates, and the appeal was loud and ominous whether the Georgia Local Rate should prevail, and so it was fiercely argued by distinguished gentlemen throughout the State.—Georgia won!

Quite recently, a division of opinion arose in the Commission as to the revision of rates, each member we conclusively assume, following his judgment and experience in exercising "a watchful and careful supervision" over the subject, pledged to "take into consideration the nature of the service to be performed, the entire business of the railroad, its earnings from passengers and other traffic,

\* \* \* \* so as to allow a fair and just return on the value of the investment." The announcement of the result was followed by the appearance of gubernatorial gladiators in the arena, declaring that the decision of the tribunal was erroneous and that the people in the next election would be called upon to so decide.

The decision of a tribunal legally constituted under the laws of the state, therefore, will come under review before a hitherto unknown appellate jurisdiction, in a measure determinable according to the skill and magnetic power of the debator. What next?

The Act re-adjusting the court, known as the Lusk Bill, fell under a weightier power, although fortified by the legislative force of the State. Courts trembled and fell as Russian strongholds struggle and fall. The result caused many disappointments, and *ex (tempore)*—judges uttered a bitter cry as they left the mantle of justice for other shoulders. Why should not suggestions arise that the judgment of the Supreme Court be carried before the people for revision, whereby they might become re-adjusted to the views of the legislators?

The commission is charged with duties, other than the revision of the local tariff, which are of great importance to the railroad company, and beneficial to the public. The corresponding benefit the corporation receives, is the protection the government affords, in the maintenance of privileges bestowed upon it.

Dealing with these questions would tend to fortify the importance of lifting the arbitrament of such delicate and difficult problems from the wayside gathering, or the midnight rendezvous on the eve of the election; yet, this occasion will not warrant the detailed classification necessary to a proper presentation of the matter. A criticism may follow me, that I inveigh against the intelligence of the people, who constitute the safe-guard of the Republic. Public opinion has my greatest respect. I do not claim it

is an "inalienable right" possessed by me, as an elector, to vote upon propositions which I do not understand, and cannot comprehensively present.

The greatest of lawyers do not grasp the elementaries of electricity, so familiar to the boy-student in that school of development, and no judicial body could communicate by means of recent discoveries with a vessel at sea. The effort would be grotesque, but, the fact of incapacity does not reflect upon the learning of any judicial mind. We seek the assistance of qualified, experienced men, in the line of their avocations. When we seek men of culture, honor and influence, we are not limited to any particular profession, or branch of industry,—they are found everywhere, and their great characters illumine the pages of our histories. The possession of wealth and integrity, are not qualities, endowing the citizen with the acute sense of determining the differentiation in tariff rates. My plea in this behalf is, that neither the revision of rates, nor the judgment of a legally constituted tribunal, should be within the grasp of political rehearsal. When politics, with all the good or bad involved, seizes any great question, unfortunate results are frequently attained; and, the question under consideration simply arrays the citizen and railroad company, as enemies. The railroad must assume the defensive. Railroads can fight, and fight vigorously. Armed with a campaign-fund, and generated by best talent, they become foes of valor and power, whereupon, the interests of the citizens are attempted to be unified to overthrow the monster,—the corporation! These words are not employed to paint the picture, but simply to present to thinking men, the inevitable result of such strife, and the far-reaching tendency to involve all questions of political economy, or internal government. Must it be said that statesmen and publicists of this great State, renowned for its citizenship of true grandeur and exalted manhood, and in the enjoyment of extraordinary pros-

perity, with every token of continued development, must yield the issues of internal government, to a question of service and employment? Every political party is understood to have a line of principles, which is dignified under the name platform; but, where parties do not exist, and there are no contrary interests, there can be no fundamental question; and in truth, party lines cannot exist, as no matter of party policy arises. There is a general intermingling of the members of all political organizations with variant opinions, on a proposition of business utility, met daily in different types and forms, through commercial demands. It is, doubtless unfortunate that questions of State have been so far settled, as to render necessary, an appeal to the voter, to maintain or overthrow a question of business polity. Really, the question,—the issue before us, cannot claim this dignity. A reversal of the opinion and judgment of an official body, is sought, by the substitution of other persons, holding opposing views. A platform announcing that a political party favors or opposes the existing or controlling views of the constituted authority, results in an arraignment of its membership.

Do I understand that the great statesman of the rock-ribbed Democracy, or the leaders of the stalwart Republicanism will preamble and resolute for or against railroad rates, as uplifting or destructive to the destinies of this country, picturing in accustomed style, the doom and desolation on the one hand or the grandeur and sublimity on the other, which awaits the results of the election?

No greater misfortune could be visited upon the business interests of our State, than a struggle for supremacy between the people and the railroads. There is no occasion for such strife. These difficulties are in the family, in the party,—they are internecine; and the sun-crowned men of all political parties should rally to the rescue of the State, and her business interests, and save them, from disaster, through peace overtures, arbitrament, or the

wisdom and power of true patriotism. Although this question may become political, by the volume of power, ultimately the courts will take it into their control, and finally adjudge its solution. Those of us, who have no relationship to the railroads, may become victors at the polls, the dominating majority of the commission may be retired, and others, favoring drastic measures may fill their places, and, if need be, legislation of that character, will be recommended in the Governor's Message, and as easily adopted, according to the principles indicated in the platform. The validity of such legislation will then become the subject of vigorous attack by the railroads. All legislation inaugurated by a faction, or party, is apt to overstep the proper boundary between lawful measures and partisan requirements. Seeking legislative office, under an advance pledge to increase or diminish existing rates, does not merit favorable consideration; and, candidates for membership of the commission, under a similar pledge, should see to it, that existing laws are repealed, before making their announcement, for surely, no one would undertake to pre-judge questions so important as the revision of rates.

Any settlement, except through procedure akin to judicial determination, where contending interests are fairly and justly heard, means oppression to the shipper, or confiscation to the carrier. Rates otherwise fixed, are out of the pale of the provisions of the statute, and necessarily become arbitrary. It is not within the legislative will, nor in the power of the people, to fix arbitrarily a schedule of rates. The effort would be despotic and tyrannical, and Courts would be called upon to declare that the carrier's property was taken without due process of law.

Let us cherish the hope that we may escape such litigation, and the threatened causes which may superinduce it. The success of railroads is dependent upon fair treatment to shipping industries, and equitable charges



for the service rendered. The wonderful development of the material resources of the State, is attributable to railroad progress. Commerce is only successful, when shipper and carrier, are successful. Antagonisms therefore, should not exist. A peace congress, and probably a little sagacity, bereft of politics, would heal a multitude of acrimonious criticisms.

In the midst of our great prosperity, when the mountains are giving up their mineral wealth to the furnaces emitting the molten lava, readily shaped into bars of steel, permeating every valley and piercing every hill, distributing capital, which, in turn, is erecting homes, making fertile the fields of cotton and grain, tilled by a new husbandry, and plucking out of the bowels of the earth, the coal and iron products in world-wide astonishing magnitude, and filling every breeze with the breath of happiness, and unparalleled advancement,—let us remember that internal strife, between the factors in these results, will impoverish and destroy the land, sublime in its creation, and unexcelled in its realization!

## ALABAMA'S NEW CORPORATION LAW

BY

**ARMSTEAD BROWN.**

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*Mr. President and Members of the Alabama State Bar Association.*

"I must have liberty  
Withal, as large a charter as the wind,  
To blow on whom I please."

—As You Like It.

Candor compels, and fair minds gladly make, acknowledgment of civilization's debt to the corporate idea.

Its structure grounded upon the beneficent natural laws of organized and co-operative action, it has left the copartnership far in its wake, and has become civilization's only practicable method of wielding capital in large masses. Indispensable to large enterprises, the corporation commends itself, for good and sufficient reasons, to the business man, in ventures small as well as large, and is wonderfully stimulating to the small community which desires to combine its efforts for the establishment of home enterprises. Corporate investments already exceed in value the agricultural interests of the country according to the last census.

It has given us the railroad, the telegraph and telephone systems, adequate banking facilities, life and fire insurance, making possible the wonderful industrial develop-

ment of this country during the past half century, and giving form and permanency to the very conditions which uphold and carry forward our civilization. Political economists tell us that its only possible substitute, in the maintenance of these material conditions, is state socialism, from which Heaven forbid us. Be this as it may, one thing is growing plainer every day to those thoughtful citizens who believe in, and would perpetuate, this magnificent business and industrial agency, and that is, the increasing importance of conserving the integrity of the corporation, and, *a fortiori*, of corporation law, the sole fountain of both its life and government.

Candor compels a further acknowledgement in the discussion of this subject; i. e., that there is abroad in the land today widespread distrust of the corporation, in spite of the benefits adverted to. Keen observers tell us that this is due mainly to (1) lax and vicious corporate legislation, making possible the easy robbery and ruin of individual stockholders by the scheming manipulators of corporate machinery and corporate property, and (2) the further fact that the corporation is the powerful instrument used by the monopolist in making his nefarious raids upon the pockets of the people. The victims are often slow to discriminate between the instrument and the purpose for which it was used. These would abolish both together. The conservative majority of our people, however, see that the question of trusts and monopolies is one thing, and the question of corporations another; and that, in the case of the latter, the problem is not one of abolition, but of regulation. In the language of our peerless Judge Stone:

“An instrumentality possessing such vast capabilities should be cherished and protected in the enjoyment and exercise of all its rights and privileges. The grovelling or agrarian spirit which would hinder or embarrass this mighty agency in the full enjoyment

of its rightful powers should receive no encouragement or countenance from right-thinking people. On the other hand, the tremendous power which may be wielded by aggregated or incorporated wealth should be kept within due bounds, and restricted to legitimate methods."

These luminous words of Alabama's immortal Judge voice the broad, yet conservative, spirit, in which this subject should be approached. There can be no doubt that we have reached the time when the corporation has become a "tremendous power"—a force, which properly regulated is a beneficence, uncontrolled a menace.

Incidental to the great industrial development and corporate growth of the past thirty years, the corporation has quietly worked a revolution which strikes deep down among the very roots of citizenship and of government, laying hold upon the sacred institution of private property—the protection of which has been, and is, one of the chief aims of the laws which cement men into states and nations. The South has not felt this transformation as much as the North and Central West, but we are evidently entering upon a period of wonderful development which emphasizes the import of this effect of corporate growth referred to. I refer to the fact of common note, that the ownership of the industrial properties of our land is passing from the individual to the corporation—from the many small properties to the colossal corporate property. The village artisan has become an employe in the city factory. The owner of the shop has sold out to the corporation. If this means private ownership in a new form, leaving the people the *real owners*, acting through the corporation, then the institution of private property, with all it means to individual hope and patriotic citizenship, will be saved, and the attractiveness of the corporation as a field for investment by the public at large will be preserved.

And this means that in the mighty on-going of industrial development there shall be no lowering of our time-honored standards of business honor and morality among the chosen few who shall stand at the helm of these great corporate vessels; and it means further, that, such shall be the conservatism and integrity of our corporation laws, that the man who sells his small enterprise, and takes shares in the purchasing corporation in its stead, shall be as jealously protected by the law as a stockholder as he formerly was in his legal title to the land on which his shop was built. And what, too, shall be done with the savings of the skilled laborer in the factory which are now going into the savings banks? If the corporation should be made so safe and sound that he would feel perfectly assured of fair treatment in becoming a co-owner of the factory in which he works, would it not minister to his manly independence and pride, increase his genuine interest in the success of his company, minimize the growing friction between capital and labor, and, withal, make of him a better citizen? Such a state of affairs would put a premium upon that individual thrift and individual character and effort that is the very antithesis of the dead level which is the dream of the socialist. The law cannot force the captain of industry and the wage-earner to become co-partners in the industrial ownership of the country, but it can make such a thing entirely possible—and exceedingly probable.

If, on the other hand, the shift to corporate control culminates in depeopleizing the industrial ownership of the country, placing the great bulk of such properties entirely in the hands of a few skillful and fortunate men, the ancient institution of private property will have been struck a vital blow, which must inevitably cause a political revolution in the wake of the industrial.

Let us confidently hope that the basis of ownership in this country will never become so narrowed as that aggregated property shall topple over of its own weight, carrying down with it our beloved individualistic institutions.

Judge Peter S. Grosscup of Chicago recently wrote: "The effect of the corporation, under the prevailing policy of the free-go-as-you-please method of organization and management, has been to drive the bulk of our people, other than farmers, out of property ownership; and, if allowed to go on as at present; it will keep them out. \* \* Proprietorship in the corporation has come to be only for those who are experienced in corporate ways, or who are willing to take a chance at the corporate wheel. \* \* In the eyes of those who, with clear vision, look upon the corporation as an indispensable phase of our industrial evolution, the way in which the corporation shall hereafter be organized, and the bounds given to its dominion, are coming to be the paramount political problems of our time."

## II.

Before passing to the general act of Oct. 2, 1903, which it is our special purpose to consider, let us note briefly that the legislature, during the earlier part of the session, mainly during the month of March, passed a number of acts designed to patch up the existing system contained in Chapter 28 of the code of 1896 and broaden its scope sufficiently, so as to, as promptly as possible, avoid any serious embarrassment which might arise from that most salutary provision of our new Constitution which prohibited further special legislation with regard to corporate charters.

### THE PATCHED-UP SYSTEM.

Articles 1 to 10 of this chapter 28, embracing separate modes for the organization and regulation of different classes of corporations, were left practically untouched, except as to Article 4 on mutual aid associations, but Ar-

title 11, originally intended for the organization of corporations "not otherwise provided for" in the preceding articles, was broadened so as to permit the creation thereunder of corporations "for any lawful business or businesses of any kind or character," with the powers therein expressed and such others as "might be conferred by law." Sections 1255, 1256, 1259 and 1260 of this article were amended. Notable among these amendments are those for the increase and decrease of capital stock, and the renewal and extension of corporate existence. Article 12, containing "general provisions," was amended, in section 1283, as to the alteration and amendment of charters. Article 13 as to charter fees, and Article 14 providing for the dissolution of corporations by a chancery proceeding, were left intact. This work was rounded up by the act of March 20, 1903, (p. 132 pamphlet acts) for the consolidation of corporations, other than those possessing powers of eminent domain, which were already provided for in this respect by the articles relating especially to them.

This left a fairly complete system, applying to all corporations organized thereunder, or which had previously been organized under general or special acts. It is this system with which we have to do in ascertaining the powers and limitations of corporations organized in this State prior to Oct. 2d, 1903.

#### THE NEW SYSTEM.

On the date named, the governor approved the general law entitled—

"An act to confer and limit the powers of business corporations and to provide for their organization and regulation"—covering pages 310 to 341 of the general pamphlet acts and containing 54 sections; one of the most comprehensive and ably drawn enactments ever passed by the Alabama legislature, and one which may be said to mark a new epoch in the development of corporation law in this State.

It will be noted that the last section of this act expressly provides, that it shall not be so construed "as to add to, take from, or otherwise effect the rights, powers, and duties and liabilities of any corporations" then existing, chartered under the laws special or general of this State, (or to repeal, modify, or otherwise affect any of the provisions of article 3, chapter 28 of the code, or any other existing provisions of law, relating to mutual aid associations, or of article 4 of the same chapter relating to building and loan associations, or of chapter 63 relating to the business of insurance companies.)

In spite of this proviso, however, the opening words of sections 46 and 47 of the act attempt in so many words to extend the provision of these sections to corporations theretofore organized under either general or special laws, as well as to those organized under that act. Space will not permit discussion of the question as to which should control—the purview of these sections, or the limitations of the proviso, which is the last expression of the legislative will. It has also been frequently asserted that, under this act, or section 16 thereof, the banks of this State may exercise the powers of trust companies. This proviso in the last section of the act negatives this power as to banking companies not organized under the new act.

As this act of Oct. 2, 1903, provides a complete system for the organization, regulation, consolidation and dissolution of all corporations of a business character, in many respects new and inconsistent with the previously existing system, it obviously impliedly repeals such prior laws so far as concerns the valid creation and governance of all corporations of a business nature organized since it went into effect.

This statement is, of course, based upon the assumption that the act was constitutionally passed. On this important question the writer expresses an opinion with



much diffidence, but after an examination of the published copies of the acts and journals of the Senate and House, he is inclined to the opinion that the act is constitutional. No doubt its able and astute progenitors looked well and effectually to this phase of the successful delivery of their distinguished offspring.

### III.

So varied and numerous are the interesting questions raised by the provisions of this important statute that the writer can only call attention briefly to a few points which strike him as being of general interest. There is much more in the act to commend than to criticise, and if the tone of the fragmentary comments here made are in the critical vein, I trust that it will not be taken as presumption, but as springing from an earnest opinion that while we should not be ungrateful for the improvements wrought by this act, it is more important that we discern its weak or dangerous points and tendencies, if such there be, not forgetting, as we go along, that it is much easier to criticise than to construct. Nor should we allow the great similarity of the new act to the New Jersey system, of unsavory repute, to prejudice us against the entire act.

Our attention is engaged at the outset by the terms of section 1 of the act, which provides that three or more persons may become a body corporate "for the purpose of carrying on *any lawful business or businesses* of any kind or nature whatsoever upon making and filing a certificate pursuant to the provisions of this act." (These provisions are found in sections 2 to 6 inclusive.)

Under this one general plan you can organize any kind of corporation of a business character—railroad, mining, manufacturing, banking, insurance, or mercantile, and for more of these purposes than one. The plan carries to the full limit, so far as the machinery for turning out the charter is concerned, the reform instituted when Theo-

dore Hinsdale, in 1837, procured the passage by the Connecticut legislature of the first business corporation act adopted in the United States, which permitted the incorporation thereunder of mining, manufacturing and quarrying companies.

Comparison develops the fact that the plan provided by this act is evidently modelled upon the same general lines as the acts of New York, New Jersey and Virginia, and places Alabama in the class known as the "leading incorporating states," which includes, besides the States named, Delaware, West Virginia, South Dakota, Maine, Connecticut, North Carolina, and Nevada.

#### 1. Procuring the Charter.

The method provided for securing a charter is briefly this. The subscribers to the capital stock of the proposed corporation must prepare and sign a "certificate" (which afterwards becomes its charter or "certificate of incorporation") setting forth certain facts regarding: (a) the name of the corporation; (b) its purpose or purposes; (c) the location of its principal place of business in the State; (d) the amount and classes of the authorized capital stock, and the amount with which it will begin business, which shall not be less than 25 per cent of the authorized capital; (e) the agent selected by the incorporators to receive subscriptions to the capital stock; (f) the names of the incorporators and the number of shares subscribed for by each, and the names of the directors and officers chosen for the first year; (g) the period of corporate existence, which may be perpetual, except that banks are limited to 20 years; (j) provisions for the regulation of the internal affairs of the corporation.

If the company to be incorporated be a railroad, navigation, telephone, or public service corporation, certain other facts as regards its terminals, lines, etc., must be set out as required by subdivisions (h) and (i) of this section 2.

The statute does not provide, as most similar statutes in other states do, that the signatures of the subscribers to this certificate shall be acknowledged in the same manner as a deed to real estate. This may prove, possibly, a serious oversight in some instances where incorporators are attempted to be held to the payment of balances due on the stock subscriptions thus executed.

This certificate must have attached to it a statement under oath by the person authorized by the incorporators to receive subscriptions to the capital stock, showing the amount of capital stock which has been paid in, and the amount of stock secured by contracts for stipulated labor or services, or transfer of property, with brief description of such property, which amount so paid in and secured shall be at least 20 per cent. of the stock subscribed for, and in no case less than \$1,000. This statement must include a copy of the entire subscription list. (Secs. 3 and 26.)

The certificate with this statement attached is to be filed in the office of the probate judge of the county in which the principal place of business of the corporation is established; but it is provided that the probate judge shall not record it unless it complies with the provisions of this act. No penalty is attached, however, to a violation or neglect of this duty. The fees provided are to be paid to the probate judge, and after recording, the judge shall endorse thereon his certificate of registration. Approval of the certificate by some official is required in 27 of the States,—in 23 of them by some State officer usually the Secretary of State.

Corporate existence commences as soon as the certificate of incorporation has been made, filed and recorded, as thus provided. (Sections 4, 5 and 6.) It would seem that these important duties should be devolved upon some central State official, such as the Secretary of State, and

his certificate of registration held to be prima facia proof of due incorporation.

Within ten days after filing the certificate with the probate judge, the corporation must cause to be filed in the office of the Secretary of State a statement signed by the probate judge, giving the name of the corporation, the names of its incorporators, the date of incorporation, the amount of its capital stock, and the name of the county in which located. Upon failing to do this, the corporation is subject to a forfeit of \$50 to the State. Nearly all the other states require the full certificate to be recorded in the office of the Secretary of State as well as in the county where the principal place of business is located.

In drawing a charter under this act, several interesting questions are presented.

The second article of the certificate to be drawn falls under sub-division "(b)" which provides that thereunder shall be set forth the "object or objects for which the corporation is formed."

It will have been noticed that section 1 of the act provides for the formation of corporations to carry on "any lawful business or businesses." Under our former system this clause was expressed in the *singular*, but here we have the *plural* as well.

#### THE OBJECT CLAUSE.

Sec. 7, subd. "h," of the act, provides that corporations formed under this act shall have power "to carry on the business or businesses expressed in the certificate of incorporation, so far as is consistent with this act." The only express limitation which the act places upon the number and variety of business purposes for which a corporation may be formed, seems to be that found in section 22, which states that banking and trust company powers cannot be exercised by corporations formed for any other purpose.

Object clauses similar to the one above set out have been adopted in twenty-one of the states and territories, but there are none perhaps quite so broad as those as those of Virginia, West Virginia and Alabama. Under a somewhat similar clause in New Jersey the United Steel Corporation, in its certificate of incorporation, all but exhausted the vocabulary of business enterprises in enumerating the various and sundry lines of business in which it sought power to engage, many of which, however, such as railroading, were expressly not to be exercised inside of the State of New Jersey. New Jersey corporations, as is well known, are empowered to do many things abroad which they cannot do at home; and—New Jersey gets charter fees and franchise taxes to such an extent as that her people pay no direct State taxes whatever, it is said.

Returning to the clause of our own statute, it would seem that, under its express terms, except for the limitations as to banking and trust companies, corporations may be organized thereunder with power to carry on *just as many different kinds of business* as its incorporators *see fit to claim* in their certificate.

#### CORPORATE AUTONOMY.

Not only is the law thus liberal with regard to allowing incorporators to define and fix the external purposes and powers of the body corporate, but it is hardly less liberal in regard to formulating regulations of the internal affairs of the corporation, which appears to be the purpose of the provisions which may be inserted in the certificate under subdivision "(j)" of section 2, which reads as follows:

"(j)" *The certificate may also contain any other provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, creating, regulating and defining the powers of the corporation, the directors and*

*stockholders, or any class or classes of stockholders; provided that such provision be not inconsistent with this act."*

Similar clauses to this one are included in the corporation acts of fourteen of the States.

In connection with this clause, attention is directed to section 25, which enacts, in substance, that all corporations formed to carry on any private enterprise or enterprises, excepting banking, insurance, and building and loan companies, "may engage in business as natural persons may, and may exercise all *such powers* as are *expressed* in the *certificate of incorporation*, if not inconsistent with any provision of this act or of the constitution of this State."

Somewhat to the same effect in this regard is a separate act to be found on pages 128-9 of the general acts of 1903, which seems to have become a law, if indeed it be constitutionally passed, without the governor's approval, and which purports to apply to all corporations then organized, or that might thereafter be organized, excepting such as had the right to condemn rights-of-way, providing that they shall, "in addition to the powers conferred by the existing general laws or any amendment thereof, have all such other powers relevant to any of the charter purposes of such corporation, and not inconsistent with the laws of the State, *that shall be set out and claimed in the charter*, or in the proceedings to alter, amend or extend the charter."

This is perhaps the most dangerous clause in the act. Here we have corporate autonomy with a vengeance. If the act itself carried with it a section establishing at least a few leading principles of wholesome corporate government, defining the essential rights and powers of directors and stockholders—common, preferred, majority and minority, then this liberal grant of autonomous legisla-

tive power, as to internal affairs, would not be so subject to abuse. While this clause evidently applies to regulations of the internal affairs of the corporation, under its broad terms more than mere by-laws can be inserted in the charter at this point, and what is here inserted becomes the fixed law of that particular corporation. The insertion of mere by-laws is not called for here. They are provided for further on. But by-laws, to be valid and binding, at law, must be reasonable, while regulations both unreasonable and dangerous, regarding vital powers of stockholders and directors, may be inserted and made binding here.

The incorporators may, by virtue of the broad and unmistakable language of the act, insert "any other provision which they may choose \* \* \* *creating, regulating and defining the powers of the corporation, the directors and stockholders,*" etc., provided, of course, that they do not fly in the face of some other provision of the law.

#### SELF-CREATED POWERS.

In other states having statutory provisions similar to this, some of the clauses most frequently inserted in the certificate are of the following nature: giving the directors power to sell the corporate property as an entirety, with or without the consent of the stockholders; giving the directors power to make and alter by-laws; to borrow money upon bond and mortgage without authority being first given by the stockholders; to issue stock in payment for property when the directors deem it necessary; power to the directors to appoint additional officers, to declare dividends, to reserve and fix working capital; to appoint an executive committee from the board with all the powers of the board between meetings; defining a quorum; empowering the directors to regulate the conditions upon which a stockholder may inspect the books; to provide for stockholders to remove directors in certain cases; to por-

vide for cumulative voting in the election of directors; defining the terms upon which preferred stock shall be issued, and its voting or non-voting power; etc. Some of these clauses are salutary; some are dangerous, autocratic and unreasonable.

Several of these powers would be in violation of our constitution and laws, and could not therefore be inserted in the articles. Some are allowed by our laws, some merely unauthorized. The only limitation mentioned by this subdivision "j" is that the powers thus inserted shall not be "inconsistent" with the act.

What kind of powers may be embraced in the articles at this point, then?

To illustrate: There is no direct statutory or constitutional inhibition upon a solvent corporation selling all its assets. Would a provision inserted in the charter authorizing the directors to sell all of the corporate property at the request of a majority of the stockholders—or without such request,—be valid, under the terms of this act, as against dissenting or non-participating minority stockholders? The power to make such disposition as against dissenting stockholders was not recognized at common law, and is power which would not be implied, (See *Elyton Co. v. Dowdell*, 113 Ala., 177) but if the incorporators may "*create and define*" powers not inconsistent with any provision of the act or of the constitution, why can they not create and define this power, and so "*regulate*" it that it may be exercised by the directors?

It may be said in reply to this, that, granting that the statute confers this broad power upon the incorporators, it is equivalent to clothing them with legislative functions; that the provisions thus formulated and inserted in the charter by the incorporators are substitutes for legislative action, and that such a delegation of legislative power is unconstitutional and void. This raises an interesting question, and one which our court will no doubt be called



upon to decide, sooner or later, but one which it is not our province to discuss here. In passing, however, we will observe that, if such grant of power to incorporators be upheld as valid and constitutional by our courts, no doubt such powers as may thus be included in the charter will be strictly construed, when it is remembered that such articles are drawn by private citizens who, in the zealous prosecution of their own enterprises, will naturally have an eye to their own interests rather than to the public good.

While I do not believe that our Supreme Court has been called upon to construe just such a statute as this, in connection with the general subject here presented, the opinion of Brickell, C. J., in *Grangers L. & H. Ins. vs. Kamper*, 73 Ala., 325, makes interesting reading. I beg leave to quote a few sentences on p. 341, as follows:

"Whether deriving existence from a special law, or from incorporation under the general law, the corporation is an artificial being of legislative creation, having no other powers or properties than such as the law confers, or which may be incidental to their very existence. \* \* \* A controlling purpose, as we suppose, in authorizing or compelling the creation of private corporations under general laws, is, to secure uniformity and equality of corporate powers, functions and privileges; that all corporations of the same class, formed for like purposes, should possess the same capacities and properties, and exercise and enjoy the same franchises and privileges. Unless it was intended to work a radical change in the nature and character of these artificial beings, the mere creations of the law, and to subvert the whole theory which had prevailed in reference to them, it cannot have been contemplated that they should for themselves create powers and privileges by declaration or reservation, whether expressed in the articles of incorporation, or in the constitution or by-laws ordained by the corporators for their government. Such declarations or reservations would soon become more

liberal and diverse than was the liberality and diversity of the grants of corporate power by special legislative enactment, the evil it was intended to remove. Of every corporation formed under the general law, the law itself becomes the charter, defines and enumerates the powers which it was intended to be exercised, the nature and extent of corporate franchises and privileges. The declaration of incorporation—the constitution and by-laws adopted for the corporate government, do not form the charter, or define or enumerate the corporate powers. These are the acts of the corporators. The charter is the grant from the sovereign power of the State; and by that source only can be varied or enlarged."

The "radical change in the nature and character of these artificial beings," which C. J. Brickell held could not "have been contemplated" by the former general laws, has indeed been wrought by this statute—or attempted to be. This is, moreover, thoroughly in accord with the tendency of modern corporation statutes in the other States, or many of them, including New York, New Jersey and Massachusetts—a tendency, however, which the conservative South has been slow to fall in with.

Not only is it revolutionary to the spirit of our former laws and decisions to allow corporations to legislate for themselves, but the many ways in which unscrupulous manipulators may use these powers to centralize in their own hands as directors, or as executive committees appointed by such boards, powers vital to the prosperity and to the very existence of the corporations, is itself contrary to the spirit of our people. For in some of its important aspects, the corporation is a minature republic, whose charter is its constitution, and whose stockholders, with their reserved rights and powers, represent the constituent states; and these rights and powers of the individual stockholder should be imbedded in that constitution or charter, else the tendency to centralization, auto-

cratic power, and the abuses which they invite, are just as inevitable in the case of the corporation as it is with the political republic.

It is the old question of the rights of the minority where government is placed in the hands of an unchecked majority. It has been thoroughly threshed out with regard to states by the master minds of the nation's history, and the same principles apply to the corporation. John C. Calhoun, in his powerful argument against the force bill of 1833, said that majority rule, unchecked by constitutional limitations protecting the rights of the several states, could but tend to "faction, corruption, anarchy and despotism." "I know," he declared, "that in venturing this assertion, I utter what is unpopular both within and without these walls; but where truth and liberty are concerned, such considerations should not be regarded." In enforcing this proposition, he used this simple illustration, the applicability of which to the corporation is patent: "Let us suppose," he said, "a small community of five persons, separated from the rest of the world, \* \* all engaged in the same pursuit, and to be of equal wealth. Let us suppose further that they determine to govern the community by the will of a majority; and in order to meet the expenses of government, the majority lay an equal tax of \$100 on each individual. Three are a majority, and have contributed \$300, and the other two, the minority, \$200. The three have the right to make the appropriations as they think proper. \* \* Should the majority appropriate the money in a manner to benefit their own particular interest, without regard to the interest of the two (and that they will so act, unless there be some efficient check, he who best knows human nature will least doubt), who does not see that the three and the two would have directly opposite interests in reference to the action of the government?" The deduction that a sound written constitution is necessary to check the majority and protect the minority, is inevitable.

The analogy of the corporation to our federal system might be carried this much further; the federal power guarantees to each State a republican form of government, and the State should guarantee to each of its corporate creations the fundamentals, at least, of fair and sound internal government, whereby the individual stockholder might have the opportunity to protect his vital rights, leaving the majority free to adopt all such regulations in the nature of by-laws, as may be necessary, in all ordinary business matters, to give force, promptitude and coherency to corporate action.

Alabama has ever been jealous heretofore of stockholder's rights, as well as states' rights, and when we consider the drift of modern corporation law, it is no doubt well that our State has, in its constitution, established several cardinal principles of wholesome corporate government, the most important of which, perhaps, are those prohibiting all fictitious increase of stock or bonds, and forbidding the increase of bonded indebtedness except with the consent of the majority of the stockholders at a meeting of which thirty days notice shall have been given.

Not only under this clause of the statute are the minority interests left unprotected, but this self-regulating power can be readily utilized so as to give undue and dangerous advantages to the coterie of incorporating stockholders, whose stock need only represent 25 per cent. of the authorized capital, and of this only 20 per cent. need be paid in, at the time of incorporating, when these various kinds of rules and regulations may be fixed in the charter so as to bind the subsequent purchasers of the remaining three-quarters of authorized stock. These incorporators can classify the stock to be issued; can provide for the issue of preferred and non-voting stock, and can from among their own number select the directors and offi-

cers who are to act for the first year, by virtue of the provision of the charter naming them, independent of any subsequent election during said year by the stockholders. If time permitted, many ways could be pointed out by which this autonomy of the incorporators could be subverted to dangerous and injurious ends, and to the perpetuation for a considerable time of corporate control in the hands of a handful of stockholders whose real interest in the company might be comparatively insignificant.

A careful consideration of this clause of the statute, in connection with several others, leads to the conclusion—to express it in the common idiom—it gives the incorporators entirely “too much rope,” and “lets down the bars” to the unscrupulous promoter and manipulator.

The theories advanced by the apologists for the laxity of modern corporation law are well summed up in the report of the committee on corporations of the Massachusetts legislature of 1903. They are briefly as follows: that stockholders and creditors are not wards of the State; no one compels them to purchase stock, and if, at their own risk, and on their own judgment, they purchase stock in a corporation whose charter is tainted with pernicious powers, let them take the consequences; that the State's duty ends in providing for the publicity of all facts attending the organization and management of such corporations, it being no part of the State's duty to guarantee the fairness of corporate management.

It may be said here that, while our statute confers the same broad powers that Massachusetts does, it does not, like the latter State, provide an approximately thorough-going system of publicity.

Admitting the salutary influence of publicity as a deterrent of fraud, and its value no matter what be the other features of the corporate system, the fallacy of the argument that the State's duty ends there must be apparent to

all who take a second thought with regard thereto. And it may be asked here, has any practical and effective method of publicity of the real inside facts of corporate management ever been demonstrated? And can annual reports filed with the Secretary of State furnish much consolation to the stockholder whose rights have been infringed during the preceding twelve months?

The State cannot dodge its responsibility for the integrity and fairness of the fundamental internal laws, nor the external powers, of the legal organisms which it creates, by saying to its people: "Here is a legal scheme which your sovereign power has evolved, by which three or more of you may form yourselves into a co-operative legal entity for business purposes. The laws of this artificial being have been so fixed by the State that it is possible for one portion of its membership to oppress and destroy the interests of the remaining members if they see fit to do so. True, these dangerous powers could be withheld, or your vital rights as members hedged about with safeguards; but the State has preferred to grant the powers, and warn its people ahead of time of their existence, then give full publicity to all facts attending their disastrous exercise."

This flies in the face of the old maxim: "An ounce of prevention is worth a pound of cure." Of course, the State cannot guarantee the integrity and fairness of *corporate management*; but *it can, and should, guarantee the integrity and fairness of the essential features of the system of government* which these, *its creatures*, shall use, making it possible for its members to compel such integrity and fairness in the management if they use reasonable diligence.

Nor should the purchaser of stocks be compelled to hunt up the articles of incorporation and hire an expert to construe its clauses in order to be reasonably safe in his

purchases. As so forcibly expressed by Judge Brickell, "a controlling purpose in authorizing the creation of corporations under general laws, is, to secure uniformity and equality of corporate powers, functions and privileges." It is just as important to the public to have assurance of the uniformity of sound principles in the frame-work of internal corporate government as to know that there is uniformity in the external corporate powers.

Both sets of powers are derived from the State. Unlike an individual, the corporation has no powers except such as are conferred by the State, or impliedly essential to its very existence, and the State cannot escape responsibility if it confers pernicious powers directly, or confers the right upon incorporators to themselves create and establish such powers.

The "modern theory" above referred to represents the swing of the pendulum from the antiquated doctrines of thirty years or more ago, which put unnecessary shackles upon the organization and management of these organizations, to the other extreme, which was reached two or three years ago, when corporate powers were left—in the leading industrial States,—to the corporations to make and mold as they pleased, leaving creditors and stockholders to take care of their interests as best they could. Such was the harvest of vicious manipulation, so great were the scandals of "frenzied financiers," and so disastrous the effects, that already the pendulum has begun to swing back the other way, and there is bright promise that within the next few years our prevailing corporation laws in this country will have reached that safe and conservative middle ground which is so essential to the permanence and health of our business and social institutions; and this, too, without federal interposition.

We have even recently seen the Governor of New Jersey, the State that has led the van of the "free-go-as-you-

please" movement, urging the passage of such legislation as would "insure the faithful administration of the affairs" of business corporations, to guard the "rights of the holder of a single share of stock," and to "remedy abuses." New Jersey is at last awaking to her responsibility,

Alabama has recognized the responsibility of a State for the character of the charter-powers which it confers, by expressly reserving, in her constitution, the right to revoke a charter which proves injurious to the public.

In passing from the consideration of those questions which arise in the drawing of a charter under this act, attention is directed to the power exercised under subdiv. "f" of sec. 2 whereby the incorporators fix in their charter the directors and officers chosen for the first year of corporate existence. They become such officers by virtue of the statute, and it has been held that a subsequent election is superfluous. (21 Encyc. of Law, 2d Ed., p. 838.) While a number of States provide for naming the directors in this way, Alabama and Virginia are the only States that set a corporation upon its feet with a full complement of officers also. It was observed in the outset, I believe, that this statute was "comprehensive."

## 2. Some of the new powers conferred:

We turn now to note as briefly as may be some of the powers conferred by the act upon organized corporations in general. These are found in section 7 of the act. There are a number of sections following this, concerning eminent domain, railways, banks, the amendment of charters, consolidation, dissolution, etc., not without interesting changes and additions, and furnishing on the whole a most admirable system, which is a credit to its authors and a distinct contribution to the laws of the State, but we have not the time, nor you the patience, to dwell upon them here.



This paper will be concluded with the following comments upon subdivisions (c) and (j) of section 7.

The most striking features of subdiv. (c) are the powers conferred, to issue and sell stock in payment of such real and personal property as may be necessary and convenient to the business and purposes of the corporation; to borrow money without limit as to amount or as to the rate of interest, and that the directors may mortgage, pledge, transfer or convey the personal property of the corporation to secure money borrowed, or debts contracted, without obtaining the consent of the stockholders.

Sec. 26 of the statute provides that property may be taken in payment of subscriptions to the capital stock, upon the basis of the *reasonable value*. This may be held to apply to subscriptions made before organization. Sec. 7, which applies to powers conferred upon organized corporations, does not, in this regard, place any restrictions as to the valuation of the property where it is taken in payment "for stock issued and sold." No doubt, however, in case of gross over-valuation, creditors and non-participating stockholders might hold such stockholders to the payment of the par value of the stock so purchased, crediting them merely with the real value of the property. This question is ably handled in the case of the Elyton Co. v. B'ham W. & E. Co., 92 Ala., 407. It has been noted, perhaps, that the battle which has waged in this State about the "trust fund doctrine" (O'Bear Jewelry Co. v. Volfer, 106 Ala., 205) has been settled so far as the assets of insolvent corporations are concerned by the statute passed by the last legislature (p. 388), holding such to be a trust fund for creditors in line with the ancient doctrine, contrary to the weight of judicial opinion throughout the country.

This power to issue stock for property is no doubt, on the whole, a salutary one. It can be used by one corpora-

tion in the absorption of others, it is true, but it is not the policy of the law to make war upon the mere size of corporations. It is no doubt highly desirable that a corporation shall have power to purchase necessary property with stock, but in its exercise it will no doubt be well to keep close to the common-law rule, quaintly expressed in an old English case, that stock should only be issued "for meal or malt,"—for money or money's worth. New Jersey, and a number of her imitators, went the limit in the other direction when they passed statutes providing that, in the absence of actual fraud, the judgment of the directors was conclusive of the value. It is said that the dexterous manner in which this clause was utilized in the formation of the United States Steel Corporation was nothing less than astounding.

*Subdiv.* "(j)" of sec. 7 confers the power "To subscribe, for acquire, hold and dispose of, stock, bonds, and other evidences of indebtedness, of any other corporation of this or any other State or country, and while owner thereof to exercise all the rights, powers and privileges of ownership, including the right to vote." Telephone and telegraph companies excepted.

Inasmuch as under sec. 1 of this act, only "persons" may incorporate, and at common-law only individuals could exercise this power, no doubt the Courts may hold that this power to "subscribe for" stock in other corporations does not necessarily imply that one corporation may become an incorporator in another, holding that the word "persons" in sec. 1 refers to natural persons. (*McAlester Co. v. Florence Co.*, 128 Ala., 240; *C. R. Co. v. P. R. Co.*, 31 N. J. Eq., 475.)

The rule which has prevailed in this country is that, unless the power be expressly conferred, corporations have no implied power to subscribe for, purchase or hold stock in other corporations. "Were this not so," says the author of *Clark on Corp.*, p. 152, "one corporation, by buying the majority of the shares of another, could take

the entire management of its business, however foreign such business might be to that which the corporation so purchasing was created to carry on. A banking corporation could become the operator of a railroad, or carry on the business of manufacturing, and any other corporation could engage in banking by obtaining control of the bank's stock."

As this statute confers these powers, and expressly provides that such ownership shall carry with it the right to vote, are not these "entangling alliances" pointed out by Mr. Clark both possible and probable?

In fact, have we not here provided the machinery for the operation of "the holding company" with power to hold a controlling interest in all its subsidiary companies? Have we not also furnished an extremely convenient method by which one company can get rid of competition by buying a majority interest in the stock of its competitor?

This part of our statute is almost in the exact words of the New Jersey statute, and quite similar to that of New York, Delaware, Connecticut, Maine, Nevada, Pennsylvania, Tennessee, Virginia, West Virginia and Wisconsin. In the other States this power is either not conferred or expressly forbidden, Georgia falling in the class forbidding it.

This seems to be a dangerous power, and, if conferred at all, should be hedged about with restrictions.

Under sec. 41 on consolidation, the dissenting stockholder must be paid the full value of his stock. Instead of consolidating with a competitor, it might be thought more desirable to buy up as quietly as possible a controlling interest in its stock and so manage its affairs as to, practically destroy the value of the remaining shares and buy them in for a song. In *M. & C. R. R. Co. vs. Woods*, 88 Ala. 630, and *George v. C. of Ga. R. R.*, 101 Ala. 607, it was held that, where something similar to this was evi-

dently being attempted, a minority stockholder who was going through the "squeezing process" might enjoin the directors of the controlling company from voting their company's stock in the election of the managing board of the other company.

But would not this doctrine be modified if the controlling company was doing simply what it was expressly authorized to do by the statute governing it?

However, Judge Stone, in the case first named, rests his decision in favor of the injunction of this use to the voting power upon the broad general principle, "that it is equally against public policy, and against that sound rule which disables trustees, or *quasi*-trustees, to act when their duty and interest conflict."

"Men must be dealt with," says Judge Stone, with his usual far-seeing sagacity, "not as faultless, but as frail, and subject to temptation, too strong for their powers of resistance. Civil liberty is but natural liberty shorn of its power to transgress the boundary which separates *meum* and *tuum*, in its comprehensive sense. Hence it is that the law, with inflexible purpose, has placed restraints on transactions in which duty and interest conflict."

It would be well not to lose sight of this principle in the enactment of corporation laws.

THE POWER OF CONGRESS TO REDUCE REPRESENTATION IN THE HOUSE OF REPRESENTATIVES AND IN THE ELECTORAL COLLEGE.

BY

EMMET O'NEAL.

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*Mr. President and Gentlemen of the Alabama State Bar Association:*

The exclusive right of the several states to fix the qualifications of voters was older than the constitution. Even in Colonial times the right to vote had been regulated by the several Assemblies and not by Parliament, and this right was not surrendered when the Federal Union was formed.

As declared by the Supreme Court of the United States, "The right to vote in the States comes from the States, but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the constitution of the United States, but the last has been."

The constitution of the United States therefore does not confer on the citizen the right of suffrage. The unabridged and exclusive right of the States to fix the qualification of voters, still exists, subject only to the prohibition contained in the Fifteenth amendment.

The removal of that prohibition would leave the several states vested with their original and unlimited power to regulate and control the suffrage of their citizens.

The scheme of reconstruction adopted after the close of the civil war, influenced necessarily by the inflamed state of public sentiment engendered by that mighty conflict, included the thirteenth, fourteenth and fifteenth amendments. The abolition of slavery speedily followed as an expected result of the war. As repeatedly declared by the Supreme Court of the United States, and as shown by the debates in Congress during the period of its adoption, the *main purpose of the Fourteenth Amendment* was to establish the *citizenship of free negroes*, which had been denied by the Dred Scott case, and to make all blacks, born or naturalized in the United States citizens of the United States.

The second section of this amendment contained the following, which on account of its pertinency to this discussion is reproduced in full:

"XIV. S. 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state."

This section then confers on Congress the power to reduce representation of a state which denies or abridges

the right of any inhabitant of the state, twenty-one years old and a citizen of the United States to vote, except for participation in rebellion or other crime.

Is this section of the amendment to be literally construed? Was its aim to inflict a penalty on the state which denied universal and unrestricted suffrage?

Was it the purpose of the amendment, while not undertaking to fix the qualification of voters, to condemn and punish the state which did not accord to every male inhabitant thereof, who had attained his majority, and who was not disqualified by crime, the unrestricted right of suffrage? Was it the object of this amendment to radically change the whole practices of the State governments, and to hold over a state which placed any restrictions or qualifications on suffrage the potent threat of reduced representation in the Congress and in the Electoral College? Is the state which limits its suffrage by the imposition of a property or educational qualification or the requirement of registration or the payment of a poll tax or a residence for a term of years, liable to the penalty of reduced representation under the provisions of this section of the amendment?

We can but concede that an affirmative answer to these questions would voice the popular construction of the meaning and purpose of this section of the amendment.

This is abundantly established by the numerous discussions of the power of Congress on this subject, which have appeared in the past twelve months in the press and periodicals of the country, as well as the debates and bills introduced in the Congress of the United States. The power of Congress to reduce the representation of a state which imposes any restriction on the exercise of the elective franchise, seems to be generally conceded, the expediency of such action alone being questioned or denied.

Recently a distinguished writer in the North American Review says that this section of the Fourteenth amendment "tacitly assumes that all male citizens of the United States are entitled to vote at all elections, and provides a penalty for an abridgment of that right." While he declares that the provision of section 2 of the Fourteenth amendment is an unwise and punitive provision, enacted not for any good purpose affecting the whole people of the United States "but for the sole purpose of punishing the people of certain states for refusing to surrender their local governments to virtual anarchy," and while he advocates the repeal of both the fourteenth and fifteenth amendments, and the substitution of another amendment, yet he asserts in substance that the states of the south which have adopted constitutions limiting and restricting suffrage, should be punished by a reduction of representation.

Yet if section two of the Fourteenth amendment should be literally construed, the anomalies which follow would be most astonishing. A state which denied the right to vote to any male inhabitant who was twenty-one years old except for participation in rebellion or other crime, would be liable to the penalty prescribed. The state could not deny suffrage to idiots or insane persons, it could not make or provide any regulations requiring registration or the payment of a poll tax as a prerequisite to the right to vote.

A foreigner or the resident of another state who is a citizen of the United States would be entitled to vote the moment he became an inhabitant of a state. Yet the constitution of Alabama provides that every person shall reside at least two years in the state before he is entitled to vote. The laws and constitutions of other states contain similar provisions. Yet the requirement of a residence from any male citizen of the United States before allowing him the privilege of voting would be abridging the right



of a male inhabitant of the state who is a citizen of the United States to vote and would be against the policy and purpose of section two of the Fourteenth amendment.

That such a construction of this amendment is wholly unwarranted, and would give it a meaning and effect never contemplated by its authors is clearly shown by the decisions of the Supreme Court of the United States, the evils the amendment was intended to remedy and the object and purposes it was designed to accomplish.

In speaking of the Fourteenth and Fifteenth amendments, in the Slaughter House cases, Justice Miller says: "But what we do say, and what we wish to be understood is, that in any fair and just construction of any section or phrase of these amendments, it is necessary to look to the purpose which we have said was the pervading spirit of them all, the evil which they were designed to remedy, and the process of continued addition to the constitution, until that purpose was supposed to be accomplished as far as constitutional law can accomplish it."

Those who assume that any fair and just construction of any section or phrase of the Fourteenth amendment warrants the conclusion that its purpose was to invoke the penalty of reduced representation against the state which did not vest all of its male inhabitants with universal and unrestricted suffrage, and that such a state could only escape the consequences of exercising its power of prescribing qualifications for its voters by the leniency of Congress, have signally failed to comprehend the pervading spirit of the fourteenth and fifteenth amendments, the evils they were designed to remedy, or to investigate the well known and declared objects and purposes they sought to accomplish.

The first section of the Fourteenth article opens with a definition of citizenship, not only citizenship of the United States, but citizenship of the states. The definition of

citizenship had been the occasion as declared by Justice Miller of much discussion in the courts, by the executive departments, and in the public journals: "It had been said by eminent judges that no man was a citizen of the United States except as he was a citizen of one of the states composing the Union."

- It had been held in the celebrated Dred Scott case, that a man of African descent, whether a slave or not, was not and could not be a citizen of a state or of the United States.

- As declared by the Supreme Court of the United States, the main purpose of this amendment was to establish the citizenship of the negro.

The first section of the Fourteenth article also established and recognized the distinction between citizenship of the United States and citizenship of the state. To be a citizen of a state, a man must reside within the state, but it is only necessary that he should be born and naturalized in the United States to make him a citizen of the United States. While this amendment declared that no state shall make or enforce any law which shall "abridge the privileges and immunities of citizens of the United States" the Supreme Court of the United States has declared that the right of suffrage was not one of the privileges and immunities of citizenship before the adoption of the amendment; that at the time of its adoption suffrage was not co-extensive with the citizenship of the state or universal and "that neither the constitution nor the Fourteenth amendment, made all citizens voters." In other words while this amendment made the negro a citizen, it did not make him a voter. The further declaration in this amendment that "No state shall deny to any person within its jurisdiction the equal protection of the laws," was designed as declared by same court to prevent any person or class of persons from being singled out as the special subjects for hostile and discriminating legislation.

Speaking of section two of the Fourteenth article the Supreme Court of the United States has declared in the case of *McPherson v. Blacker* 146 U. S. page 39 as follows: "The right to vote intended to be protected refers to the right to vote as established by the laws and constitution of the State. There is no color for the contention that under the amendments every male inhabitant of the State, being a citizen of the United States, has from the time of his majority right to vote for presidential electors. The object of the Fourteenth amendment in respect to citizenship, was to preserve equality of rights, and to prevent discrimination as between citizens, but not to radically change the whole theory of the relations of the State and Federal Governments to each other, and of both governments to the people."

If contemporaneous history, and practically construction are to be allowed their legitimate force, there is no basis for the contention that section two of the amendment authorized Congress to impose the penalty of reduced representation on state, which while making no discrimination against any class or race, exercised its sovereign power to prescribe qualifications for voters. Though the student can learn from the debates in Congress, many reasons for the adoption of the Fourteenth amendment, yet he can learn more from the report which the Joint Committee on Reconstruction made, when it offered the amendment. In that report it was stated that it was doubtful whether the states would consent to surrender the power to prescribe the qualifications of voters, a power they had always exercised and to which they were attached. This was assigned as a reason for not vesting Congress with the right to regulate or control the suffrage. The committee concluded "that political power should be based in all the states, exactly in proportion as the right suffrage should be granted, *without distinction of color or race.*"

Leaving as the committee declared the whole power of regulating the suffrage with the people of each state, it was believed that the advantage of increased political power would be an inducement to allow all to participate in its exercise.

The debates in Congress and the declared purpose of its authors and advocates establish beyond controversy that the primary purpose of the Fourteenth amendment was to protect the negro race and prevent discrimination against them by law, and to force negro suffrage upon the states of the South, by means of the penalty of a loss of part of its representation.

Since the adoption of the Fourteenth amendment, while numerous bills have been introduced in Congress seeking to enforce the penalty prescribed by section two of the amendment, it was not until the National campaign of 1904, that any political party had demanded the enforcement of this penalty. In the platform adopted at Chicago by the Republican National Convention is found the following:

#### ELECTIVE FRANCHISE.

"We favor such Congressional action as shall determine whether by special discriminations, the elective franchise in any state has been unconstitutionally limited, and of such is the case, we demand that representation in Congress and in the Electoral College shall be proportionately reduced as directed by the constitution of the United States." Since the convening of the last Congress numerous bills have been introduced in that body, seeking to carry out this pledge of the Republican platform.

This section moreover is worthy of careful consideration, for it is the latest, most deliberate and authoritative expression of the views of the dominant political party on this important subject. It clearly and boldly presents the issue to the American people.

What is meant by the unconstitutional limitation by special discrimination, by any state, of the elective franchise? As we have shown while the Fourteenth amendment made the negro a citizen, neither it or the Fifteenth amendment made him a voter. The Fourteenth amendment did not establish universal suffrage directly or by implication. It only imposed the penalty of reduced representation on a state that denied or abridged the right of the negro to vote on account of his race or color. Construed then in the light of the amendments, and their construction by the highest judicial tribunals of the Republic, the clear meaning of the Republican platform is a demand that Congress shall determine whether any state has denied or abridged the right of a citizen of the United States to vote on account of his race, color or previous condition of servitude, in violation of the Fifteenth amendment? If Congress should determine that such denial or abridgement of the suffrage has occurred, the demand is further that the representation of such state shall be reduced by Congress in the House of Representatives and in the Electoral College. The pertinent and important inquiry then is has Congress the constitutional power to reduce the representation of a state in the Congress and in the Electoral College, if it should reach the conclusion that a state has denied or abridged the right of the negro to vote on account of his race, color or previous condition of servitude.

An answer to this important question requires a brief review and resume of the history and purposes of the Fourteenth and Fifteenth Articles of Amendment of the constitution of the United States, as to both which we have shown there is a very general popular misconception.

#### THE FOURTEENTH AMENDMENT.

The Fourteenth amendment did not undertake directly or by implication to interfere with the rights of the States

to regulate and control the suffrage of its citizens. If a state denied to the negro as a race the right of suffrage the penalty which Congress could impose was a reduction of representation in Congress and in the Electoral College. Instead of denying, the Fourteenth amendment recognised the unabridged power of the state to deny the suffrage to the colored race, by the imposition of a penalty for its refusal. If this amendment had prohibited or denied the right of the states to refuse the elective franchise to the negro race, the imposition of a penalty for such refusal would have been unnecessary, for such a refusal would have been void. The authors and supporters of this amendment had hoped and confidently expected that the penalty provided would prevent any state from denying to the negro as a race the elective franchise, on account of the reduced representation which might follow. In a recent work on the constitution of the United States, Thorpe after reviewing the debate on the passage of this amendment concludes his discussion with the following language: "The Fourteenth Amendment established the citizenship of the negro and was intended to secure him the benefit of his freedom. But still it left him without the right to vote. Its supporters had hoped that the Southern States would be induced to grant him this right because of the increased representation they would thereby secure in Congress. This hope was not realized, and the Republicans determined to take away from the states the power to discriminate against any citizen of the United States as a voter on account of race, color or previous condition of servitude."

#### THE FIFTEENTH AMENDMENT.

Embittered by the failure of the South to grant the negro the right to vote, Congress resolved to transfer to itself the power to regulate the suffrage in the States. It is a matter of history that had the Fifteenth Amendment

finally passed as amended in the Senate, the states would have been stripped of all power and Congress alone would have dominated all elections and regulated the qualifications of all voters. Senator Williams of Oregon did propose to amend the original resolution offered by Boutwell by asserting the power of Congress to regulate the right to vote, and keeping the whole matter within the control of the National Government. But the entire Democratic vote resisted this radical innovation, and the Republican leaders were forced to agree to their views. Finally Wilson of Massachusetts offered a substitute to the effect that no discrimination should be made in the right to vote in any state on account of race, color, nativity, property, education or religious creed and which substitute passed by a small majority. The House, however, declined to agree to this substitute, and the resolution was finally passed in the form in which the amendment now appears, but only after repeated efforts had been made to so amend it as to make every citizen 21 years of age or over, a voter, not to be disfranchised except for crime. The history of this amendment shows that while the Democratic minority were unable to defeat a suffrage amendment, they did determine its form, and did compel the majority to so word the amendment as to recognize the sovereignty of the states and to practically continue in the states the right to regulate the elective franchise.

The close vote, however, by which the proposition to transfer to Congress the control of the suffrage, was defeated, shows by what a narrow margin the courage and fidelity of the opponents of the centralising tendencies of the times, prevented an innovation which would have fettered and degraded the state governments, by subjecting them to the control of Congress in the exercise of a power heretofore universally conceded to them of the most fundamental character. So radical an innovation is

accomplished, would have stripped the states of all power and changed the form of our government.

The debates in Congress and the decisions of the Supreme Court of the United States construing these amendments, establish the following propositions:

First. The fourteenth Amendment, while it made the negro a citizen did not make him a voter or deny the right of the state to exclude him as a race from participation in the elective franchise. As recently stated by the Supreme Court of the United States in the case of *Pope vs. Williams* in 193 U. S. p. 632, "The privilege to vote in any state is not given by the Federal Constitution, or by any of its amendments. "It is not a privilege springing from citizenship of the United States." "It may not be refused on account of race, color or previous condition of servitude, but it does not follow from mere citizenship of the United States." "In other words, the privilege to vote in a state is within the jurisdiction of the state itself, to be *exercised as the state may direct, and upon such terms as it may seem proper, provided, of course no discrimination is made between individuals in violation of the Federal Constitution.*"

Second. The second section of the Fourteenth Amendment did not vest in Congress the power to reduce the representation of a state, which had regulated the suffrage in any manner it saw proper, provided the regulations were uniform, and did not discriminate against individuals on account of race, color or previous condition of servitude.

There is no authority for the contention that the Fourteenth Amendment by implication sought to establish universal suffrage.

Third. The Fifteenth Amendment simply invested citizens of the United States with the right of exemption from discrimination in the exercise of the elective franchise on account of race, color or previous condition of servitude. Any action of a state, not directed by way of



discrimination against the negro as a class, or on account of race, does not come within either amendment.

These propositions of law sustained by the highest judicial authorities, justify the assertion that there is no limitation on the sovereign power of the states to impose such restrictions or qualifications on the suffrage of its citizens, as it may deem proper, which is not directed in hostility to the negro as a race, and that such regulations when tested by judicial construction will be upheld. As declared in the case above cited, "A state, so far as the Federal Constitution is concerned, might provide by its own constitution and laws that none but native born citizens should be permitted to vote." Before the passage of the Fifteenth Amendment the former slave holding states had the power to confine the suffrage to the white race, and accept the penalty of reduced representation, if imposed by Congress. "The willingness of the South to accept reduced representation, rather than risk the horrors and profound degradation which would follow making a race of ignorant slaves their voters and law givers, their judges and representatives, was the primary cause, that induced the passage of the Fifteenth Amendment. *This amendment withdrew from the states the power to discriminate against the negro on account of his race, in the exercise of elective franchise. After its passage no state could confine its voting population to the white race alone. As declared by the Supreme Court of the United States "Beyond question the adoption of the Fifteenth Amendment had the effect in law to remove from the state constitutions, or render inoperative, that provision which restricts the right of suffrage to the white race."*

The Fifteenth Amendment in effect repealed that portion of the Fourteenth Amendment which recognised the unlimited power of the states to control suffrage and to limit the elective franchise to the white race. Any discrimination by a state, by way of denial or abridgement of

the right to vote, on account of race, color or previous condition or servitude, was rendered inoperative and void by force of the operation of the Fifteenth Amendment. No congressional legislation was necessary, the amendment was self executing without any ancillary legislation.

It follows therefore that the passage of the Fifteenth Amendment withdrew from Congress the constitutional power to reduce the representation of a state on account of any legislation which discriminated against the negro as a voter on account of his race. If a state passed a law which violated the provisions of the Fifteenth Amendment, such a law was unconstitutional and void. If the law was void it could not deny or abridge the right of the negro to vote. By what authority then can Congress reduce the representation of a state, for enacting by its constitution or by statute, laws which discriminated against the negro in the exercise of the elective franchise, on account of his race or color—laws which by operation of the Fifteenth Amendment are void ab initio—which possess no more force or effect than if they had never been written on the statute book? A state law which contained such discrimination would be void, and when tested in any court, state or Federal, would be so declared. This doctrine has been fully declared in the recent case of *Giles v. Teasley* 193 U. S. p. 146. In that case the complaint alleged that the provisions of the Alabama State Constitution were repugnant to the Fifteenth Amendment, demurrers being filed, the court held that if the provisions of the constitution of the state were repugnant to the Fifteenth Amendment, they were void, and that the board registrars appointed thereunder had no existence, and no power to act, and would not be liable in an action for damages for refusal to register.

If the Constitution of Alabama is in violation of the provisions of the Fifteenth Amendment, it is void, and would furnish no obstacle to the exercise of the right of suffrage

by the negro. Congress could not reduce our representation for disfranchising the negro, when by operation of law the disfranchisement did not exist.

The demand of the Republican platform, a demand from a party which received the endorsement of the people in the last National election, is that Congress must determine whether a state has passed a law in violation of the Fifteenth amendment. It is clear that Congress can only determine—decide this question by exercising judicial functions—by converting itself into a court and sitting in judgment on the constitutionality of the laws of a sovereign state of the Union. Having usurped judicial functions, having reached the conclusion that the suffrage law of a state was unconstitutional,—that the negro as a race was disfranchised on account of color, the next step which is demanded is that a reduction shall be made in the representation of the state in the lower house of Congress and in the Electoral College. The programme of usurpation disclosed by the demands of this platform should arouse a serious and earnest consideration of the country. Well may it be asked what reason could be given for such a reduction in representation if Congress should decide to make it? What would be the offense of which the state was guilty, which would justify Congress in stripping it of its sovereign power, and lessening its influence in the councils of the nation? The only answer could be that the State had passed laws which by the express terms of the Fifteenth Amendment were void and inoperative, which in the language of the Supreme Court have no existence—laws which left the negro possessing the requisite qualifications, the same right to vote as the white man.

In other words the exercise of the power claimed by the Congress, would put Congress in the singular attitude of reducing the representation of a state for passing a void law.

Suppose Congress in the exercise of its assumed power, should decide that a state law on suffrage was repugnant to the Fifteenth Amendment, and proceed to reduce its representation, and the Supreme Court of the United States would declare the law to be valid and constitutional, which decision would control, the decision of Congress or the decision of the highest legal tribunal of the country.

The Constitution of the United States provides that the judicial power of the United States shall be vested in one Supreme Court. This judicial power, in the language of the constitution, extends to all cases in law or equity arising under the constitution, the laws of the United States, or to controversies between a state and its citizens. Yet if the asserted power of Congress to sit in judgment on the constitutionality of the laws of the states in reference to suffrage has any existence or warrant of law, its effect would be to strike down the line of demarcation which obtains between the three great departments of Government.

The courts would be stripped of their power to expound and enforce the laws, and in their stead would be substituted a partisan Congress obeying the exigencies and demands of party necessity rather than the rules of law, vested with judicial functions and made the final judges of the validity of the laws of the states, clothed with arbitrary power to reduce representation of the states and lessen their influence in the House of Representatives and in the Electoral College.

The power of the courts to determine great constitutional questions in the regular and orderly course of procedure would be transferred to a partisan Congress, and the legislative department of the Government would usurp the functions of the judiciary. The courts of the country are fully competent to protect the negro in all his rights of suffrage, by rendering inoperative any hostile or dis-

criminating legislation, in violation of the Fifteenth Amendment. The radical doctrine now asserted is that a state can be stripped of its power, punished and degraded for passing laws which by operation of the Fifteenth Amendment are absolutely void. Fortunately for the country this dangerous doctrine, now asserted, of the power of Congress to exercise control of the suffrage has no warrant or support in the constitution, and was repudiated and denied by the Congress that framed the Fifteenth Amendment. It was denounced then as an effort to subvert our form of government, and convert it into a single, centralised and consolidated government, in which the separate existence of the states would have been entirely absorbed. It would have established an unqualified despotism in place of a Federal Union of coequal states.

The power of Congress to reduce representation in the House of Representatives and in the Electoral College, under the provisions of the second section of the Fourteenth Amendment could only arise when a state had abridged or denied the right to vote *on account of race, color or previous condition of servitude*. Until the passage of the Fifteenth Amendment the states possessed such power. It does not now exist. The Fifteenth Amendment in effect repealed that portion of the Fourteenth Amendment which authorised or recognised the power of the states to limit the suffrage to the white race, and hence necessarily withdrew from Congress the power it possessed to reduce representation. Of course the amendment might still afford a remedy "for a case supposed by Madison, where treason might change a state government from Republican to despotic and thereby deny suffrage to the people."

The Fourteenth Amendment was in the nature of a threat. It said to the former slaveholding states that unless you include the negro among your Electors, Con-

gress will reduce your representation. The South answered that she would consent to a surrender of her power in the councils of the nation rather than submit to the unspeakable horrors, the humiliation, and degradation which would follow the rule of an inferior race, from whose limbs the shackles of slavery had been struck in hot and vengeful haste, and who without previous preparation had been clothed with all the responsibilities of citizenship. The dominant party that controlled Congress, bitterly disappointed at the attitude of the South replied with the Fifteenth Amendment, saying in effect to the South that since you will not accord the suffrage to the negro we now prohibit you by a constitutional amendment from abridging or denying the right of the negro to vote on account of his race or color, we now no longer threaten you with reduced representation if you fail to carry out our settled policy, *we command you to make no discrimination against the negro as a race in your suffrage laws.* You can no longer accept the alternative of negro suffrage or reduced representation, and we leave no field of operation for the provisions of Section 2 of the Fourteenth Amendment. Congress can not reduce your representation because you are without power to abridge the right of the negro to vote on account of his race. If such a denial or abridgment should be undertaken it would be void by the mere force and operation of the Fifteenth Amendment without any ancillary legislation. Keeping then steadily in view the established fact that the Fifteenth Amendment in effect repealed and nullified section two of the Fourteenth Amendment which authorised Congress to reduce representation for a denial or abridgment of suffrage to the negro race on account of race or color, the Southern States which have in the exercise of their sovereign and unquestioned power, to **regulate** and control the suffrage of their citizens, **impelled** by a solemn conviction that the preservation of their civilization demanded that

they prevent a recurrence of the horrible misrule, anarchy and corruption which followed unrestricted negro suffrage, need have no apprehension of a reduced representation. Having violated no provision of the Federal Constitution, but only exercised a right they reserved when the Federal Union was formed, the States of the South, with no spirit of apology on their lips, not in the attitude of suppliants asking for mercy or appealing to clemency of the dominant political party, can with calm and assured confidence rest their defense on the rock bed of the constitution.

The South alone is competent to solve the serious problems which were created by the emancipation and enfranchisement of the negro race, to solve them justly, permanently and with such wisdom as is possible to the finite mind. And while it is to be hoped that the conservative sentiment of the country will prevent any serious effort being made to put into force and effect the repudiated policy of Congressional control of the suffrage, to revive sectional animosity and rekindle anew race antagonisms, yet the states of the South which have reformed their suffrage laws, are sustained with the confident assurance that they have only exercised powers never surrendered to the Federal Government, powers essential to the preservation of their local governments from misrule and virtual anarchy.

Alabama and her sister states can place their reliance not on partisan majorities in Congress, not on the shifting sands of political expediency, not on the support of political allies, or the endorsement of the conservative and intelligent sentiment of the country, but rather on that supreme judicial tribunal of the Republic which has always "held with a steady and an even hand the balance between state and Federal power."

HAS THE CITIZEN OF THE UNITED STATES. IN  
THE CUSTODY OF THE STATES' OFFICERS.  
UPON ACCUSATION OF CRIME AGAINST  
ITS LAWS, ANY IMMUNITY OR RIGHT  
WHICH MAY BE PROTECTED BY  
THE UNITED STATES AGAINST  
MOB VIOLENCE?

BY

JUDGE THOMAS G. JONES.

*"It is the duty of the courts to be watchful of the Constitutional rights of the citizen."*—Boyd v. United States, 116 U. S., 635.

*Mr. President and Gentlemen of the Alabama State Bar Association.*

You have met in annual assembly, animated by the high purpose to elevate the jurisprudence of our country, and to aid, as far as in you lies, in securing for our fellow-man, the highest measure of happiness and right which can come to the citizen under the wise reign of the law. Having had the duty in another place to discuss the power of the United States to protect its citizen in the enjoyment of his rights under the Constitution, in certain phases of the duty imposed upon the State, to render him due process of law, it can not now be out of place to avail myself of the opportunity, extended by the kindness of such a body as



yours, to lay before it some further considerations on this grave subject. Any question which touches the constitutional rights of the citizen of the United States is always matter of the highest concern to all who live under our free institutions, and discussion of such matter before a body of trained lawyers and thoughtful citizens can only result in good, and help to reach a right solution.

The XIV amendment certainly secures to the citizen who is held for trial by State officers, on accusation of crime against its laws, the right to enjoy the benefits of the State's established course of judicial procedure at its hands. Is there not, necessarily, included in this right, the immunity to enjoy exemption from violence at the hands of lawless private persons, which prevents the citizen's enjoyment of the administration of judicial procedure at its hands, when the State attempts to afford it? If such immunity exists, has Congress the power to protect its enjoyment against such attacks? If Congress has that authority, has it exercised it?

#### CONSTITUTION AND LAWS BEARING ON QUESTION.

The answer to these questions, must depend on Section 1 of the XIV amendment, and Section 5508 of the Revised Statutes of the United States. Section 1 of that amendment, reads:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Section 5508 of the Revised Statutes reads: "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years; and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States."

ONLY DICTA, NO DECISION OF QUESTION.

These questions have never been before the Supreme Court, and, as a careful analysis of its decisions will show, have never been decided by it. Dicta we can find in abundance, decisions none. No court, in which the English tongue is spoken, has been more careful than the Supreme Court of the United States, to reserve liberty of judgment in new cases, against expressions in opinions in former cases, unless the very matter involved in the new case was drawn in question and passed upon in the prior case. A striking instance of the application of the rule under which it refused to hold a State court bound by something more than a mere expression of opinion in a former case, is found in *Boyd v. Alabama*, 94 U. S. 648. Boyd carried on a lottery, under authority of a statute, which he claimed constituted a contract with the State. The State claimed that the statute had been repealed, and indicted Boyd for carrying on the lottery. The State Supreme Court held that the act constituted a contract with the State, and could not be repealed, and, therefore discharged Boyd. After that decision Boyd continued to carry on the lottery. The State again indicted him, insisting that the statute had never been constitutionally passed. The State Supreme Court upheld that view, and affirmed the conviction on the second trial. It was a case of peculiar hardship, in that an act innocent when done, according to the decision of the highest court of the State, became criminal under

the last decision; and that, notwithstanding both cases, arose between the State and the same defendant, and involved the same right, under the same statute, and the fact that the judgment in the first case inevitably involved the finding that the Statute had been constitutionally passed; since, otherwise, it was no law, and could not constitute a contract. Nevertheless, the Supreme Court of the United States held that the constitutionality of the statute had not been drawn in question in the first case, and that the State Supreme Court was not bound by its first decision. In *Cohens v. Virginia*, 6 Wheaton, 399, the Court speaking through Chief Justice Marshall, said:

"It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit, where the very point is presented for decision. The reason of the maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it, are considered only in relation to the case decided; but their possible bearing on all other cases is seldom completely investigated."

In *Carroll v. Carroll*, 16 Howard, 305, Justice Curtis speaking for the Court, after quoting these remarks of Chief Justice Marshall, reiterated the maxim in the words:

"This court, and all other courts organized under the common law, has never held itself bound by any parts of an opinion in any case, which was not needful for the ascertainment of the rights or title in question between the parties," and observed of two other cases, that they are "an illustration of the rule that any opinion given here or elsewhere, cannot be relied on as a binding authority unless the case calls for its expression."

Let us inquire, therefore, whether the opinions in the cases relied on to foreclose this discussion, "went beyond the case," whether "the very point" was "presented for decision" in any of them; whether "the expressions" relied on, "were needful for the ascertainment of the right in question between the parties," was "actually before the court," and, "considered to its full extent." The slightest examination of those cases will show that the opinions in them did not consider the question here presented, which was not involved in any of them, and that this case does not fall within the reason of the judgment in a single one of them.

#### REVIEW OF CASES ON SUBJECT.

The cases before the Supreme Court in which occur the expressions relied on to show lack of the power in Congress, came before the court in three forms, and showed: either, a denial by State legislation or hostile acts of State officers of rights secured by the XIVth amendment; or, attempts by Congress, by plenary legislation, to originate rights among citizens of the State in order to protect a Federal right, which is no more than the privilege to be exempt from invidious discrimination at the hands of the State, without reference to faults of the State in this respect; or, an effort by Congress to protect rights secured under the amendment against acts of private individuals, by legislation whose provisions confused rights dependent upon the Constitution and laws with rights secured only by the laws of the State, and by including each right alike, without distinction, in provisions which were thus incapable of separation, necessarily vitiated the particular act as being broader than the power granted to Congress.

It is to be observed at the outset, that the controlling consideration which compelled a bare majority of the Supreme Court in the Slaughter House Cases, to deny power

to the United States to strike down a monopoly, created by state law, of providing a place where animals must be slaughtered in a city, was, that upholding the principle it involved, would subject to the power of Congress "the entire domain of civil rights heretofore belonging exclusively to the State" and "fetter and degrade state governments by subjecting them to the control of Congress in the exercise of powers heretofore universally conceded to them, of the most ordinary and fundamental character." This power, of the "most ordinary and fundamental character" here referred to, is the legislative power of the State, the power to give the law which regulates and controls its own domestic affairs. The Supreme Court in subsequent cases, following that decision, has made the presence or absence of such control by Congress of the laws and power of the State government, in the Federal legislation for the protection of a right, the key to lock or unlock the power of Congress, in the particular case, to legislate for the protection of rights or immunities arising under the XIV amendment. If the Federal statute does not attempt, in protecting such a right, to control State governments or their laws, the principle declared in the Slaughter House Cases has no application. The philosophy of the whole series of decisions under the XIV Amendment is, not that there is any want of power in Congress to aid the State, in the accomplishment of results intended to be effected by the imposition of duties upon the State by the constitutional amendment, when the State endeavors to perform them; nor that the United States shall not exercise its "concurrent sovereignty," over persons and things within its dominions, to effect the same ends, so long as it does not attempt to control State governments, or change their laws, or their relations to the United States, further than the amendment itself changes them. Their trend is not that the United States can not help, but that it can not help by modes which assail the

laws, or power of the State over its citizens. When Federal legislation does not run counter to any of these objections, and is "appropriate," that is, effects the results intended to be accomplished by the amendment, in modes that do not overthrow State Power, it does not fall within the reason or condemnation of these decisions. The just inference from them, lies rather in the direction of upholding the power.

Clearly, neither the Civil Rights Cases, nor the Slaughter House Cases, involved the question here presented. They turned respectively, upon the powers of the United States, legislative or judicial, to interfere with State laws which made no invidious discrimination between citizens. What immunities the citizen is entitled to enjoy under the XIVth amendment against attacks by private persons upon the administration of the State's established course of judicial procedure, and what power Congress has to protect them, when the State seeks to punish a citizen for crime, were neither raised nor mooted in those cases. A case like this in its facts, but not in the principles which control it, is *Harris v. United States*, 106 U. S. 629. There, prisoners, in the custody of the sheriff upon accusation of crime against the laws of the State of Tennessee, were wrested from him and murdered by a mob. The State had taken the first step in the administration of judicial procedure by arresting the prisoners and holding them for trial. The indictment against the members of the mob, however, was for conspiracy to deprive the prisoners "of the due and equal protection of the laws of Tennessee"—a right which, when there is no invidious discrimination, is secured only by the laws of the State, and the enjoyment of which, in the constitutional sense, can never be impaired by private individuals—and not for, the widely different offense, of preventing the enjoyment by the prisoners of the administration of the established course of judicial procedure at the hands of the State, which is a

right secured under the Constitution and laws of the United States. Since the clause concerning "the equal protection of the laws" creates no Federal right except to be free from invidious discrimination by state instrumentality against the equality of the citizen before the law, the indictment in that case, which did not allege such discrimination by the State, did not charge that any Federal right protected under that clause, had been violated; and no other Federal right was involved in the case made by the indictment, or by the statute under which it was brought. It will be seen, therefore, from the most cursory examination of this series of cases, that none of them involved the power of Congress to protect State officers in the discharge of the duty required by the amendment as to "due process," and the citizen in the enjoyment of the benefits resulting therefrom, against the lawlessness of private individuals which frustates the efforts of the State, when it is endeavoring to perform these duties; if the Federal legislation which deals with such acts, punishes them, only in their character as an attack upon the enjoyment of the right, and does not attempt to change State laws, or control the exercise of State power. Such a case lies far without the reason of any of these decisions, or the sweep of the evil they designed to avoid.

#### OTHER COGNATE DECISIONS.

Moreover, in ascertaining the privileges and immunities arising under the due "process clause," in the phase here presented, and the power of Congress to protect them, we can not disregard doctrines which the Supreme Court has proclaimed in other cases arising under the amendment and other provisions of the Constitution. The Supreme Court has frequently held that State officers, in discharging the duties required of them under the XIVth amendment, are representatives of the State and that, in wield-

ing State power, State officers are in the exercise of a duty imposed upon the State by the Constitution of the United States, and, therefore, Congress may protect the performance of the duty so put upon the officer as the State's representative, by punishing the officer for not performing it. It has upheld conviction of private persons, under Federal laws, for interfering with other private persons in the exercise of functions, or the enjoyment of rights, which are dependent upon the laws of the United States, although the acts by which that result was designedly effected, would, without that intent and effect, be punishable solely under the laws of the State. It has gone still further and sustained the laws of the United States which imposed penalties upon State officers for not performing their duty as commanded by the State law, so far as it affected the election of Congressman and presidential electors; declaring that the duties to be performed under these laws, were "due to the United States, as well as to the State," and that the power necessarily followed from "the direct interest" the national government had in the subject.

A third of a century has elapsed since the Supreme Court, in the Slaughter Cases, speaking of the equal protection clause, declared: "We doubt very much whether any act of the State not directed by way of discrimination against negroes on account of their race, will ever be held to come within the purview of this provision. It is so clearly a provision for that race and for that emergency, that a strong case would be necessary for its application to any other." The court has progressed a long way in the construction of the amendment since then. Corporations are now held to be persons within the meaning of this provision, and charges for the use of property affected with a public interest, the validity of schemes of taxation, the rights of persons sui juris to regulate their hours of labor, or make other contracts, and other like subjects



have long since been brought within the field of its protection. What immunities arise under the due process clause, in any given case, must be traced and determined by the scope of the amendment, as it has been extended from time to time by the gradual process of evolution in the Supreme Court; and not by seizing upon any one or more utterances of that court, in any particular case, as an unalterable standard by which to measure every right which can arise under the amendment. No other rule is safe or practical.

#### OTHER CONSIDERATIONS.

The student of our jurisprudence would be over-bold, when the reasons for the contrary holding are so cogent and important, and where there has been no decision of the very point by the Supreme Court, to declare that Congress is without constitutional warrant to lay its hands on private individuals, whose lawless violence prevents the State from discharging a great duty the Constitution imposes on it, to save a great right for the citizen, which it was intended thereby to secure, and which can be saved in no other way than by the performance of that duty by the State. Doubt and debate as to the powers of Congress and the jurisdiction of the United States, as to matters of great moment to its people, have not always been foreclosed in the Supreme Court even by its own solemn decision on the very point. For fifty years, it had been the settled doctrine, supported by the usages and traditions of the people, that the admiralty jurisdiction of the United States began and ended with the ebb and flow of the tide. Larger experience proving this to be an ill-timed construction of the admiralty power given by the Constitution, the Supreme Court changed its construction of the bounds of the power, to meet new conditions of navigation and commerce. Early decisions under the power to regulate commerce have given away, or been modified, in later

times, to suit conditions and developments of today. The power in Congress to make legal tender of its paper obligations was not settled by a solemn decision that it had no such authority; and a little later, that decision was overthrown and the power upheld. Numerous illustrations are found in the decisions of that great court, of the force of new urgencies and new times in molding and changing the play of the powers of government under the Constitution, as defined by earlier decisions of that court, and it is not safe, in considering any right arising under the Constitution, to ignore these potent influences.

ESSENTIAL DIFFERENCE BETWEEN RIGHTS UNDER THE DIFFERENT CLAUSES.

It is also essential constantly to bear in mind, in determining the power of Congress as to this matter, the fundamental difference, in nature and constitutional consequence, between the rights and immunities arising, respectively, under the clauses of the XIVth amendment regarding "due process of law" and "the equal protection of the laws." This difference is in respect of the things in which these rights consist, what constitutes enjoyment of them, in the constitutional sense, and the scope of the constitutional commands in respect to them.

The whole force of the command regarding "the equal protection of the laws" is to create for the citizen, the immunity or privilege of not being discriminated against in the making or execution of the laws. If the State withholds from all or gives to all, under the same circumstances, the enjoyment of any specific right, Congress is powerless, under this clause, to compel the State either to deny or afford enjoyment of that right. Whatever right the laws of the State thus give for the protection of life, liberty or property and the pursuit of happiness, which constitute the system which is denominated "the equal protection of the laws," is a pure creation of State power,

flowing from that power from the beginning, and dependent upon that power to the end. The authority conferred upon Congress, under this clause, exists and can be put in motion, solely to frustrate invidious discrimination as made by State power, and, then, that discrimination arms Congress with no further warrant than to strike down such discrimination. Until unlawful discrimination is made, no Federal right is brought into life, and there is nothing to come under the protecting power of this clause of the amendment. Its command is nothing more than a command that the State shall make and execute its laws fairly and impartially, or that it shall create a status of legal equality and endeavor to maintain it. When it does that, the State has performed its full duty to the citizen, and he is thereby put in full possession and actual enjoyment, in the Constitutional sense, of every right or immunity which this clause of the Constitution intended to confer upon him. Since this status can be created only by the exercise of legislative power and impaired only by the acts of officers who wield State authority, a private person, who can neither legislate nor otherwise wield State power, cannot impair or otherwise prevent the citizen's enjoyment, in the Constitutional sense, of the right given under this clause. Resistance to these laws by private individuals is nothing more than resistance to State authority, and can not blot out the fact that the State has passed impartial laws and provided means to execute them, and has thereby afforded "the equal protection of the laws"—the legal status the Constitution commanded it to confer—and, in consequence, the citizen has, and has had, actual enjoyment of the right or status. Lawlessness of private individuals being utterly ineffectual, in the Constitutional sense, to prevent or impair the citizen's enjoyment of "the equal protection of the laws," such acts on their part, can not furnish a resting place, under that clause, for Federal power from which to build

an offense against the United States out of such acts, on the ground that they impair the enjoyment of a right which is secured by the Constitution or laws. These considerations alone, quite apart from the fact that the statute annulled in Harris' case was broader than the authority conferred by the Constitution, clearly compelled the result reached in that case.

#### THE DUE PROCESS CLAUSE.

The right or immunity of the citizen accused of crime, to enjoy "due process," at the hands of the State, is not quickened into being, in the constitutional sense, until the State proceeds or attempts to proceed, against the citizen to take his life, liberty or property. Until then, his rights, so far as secured by Federal law, are dependent on the "equal protection of the laws." If the State does not proceed against an offender, and remains inert, suffering private individuals to work their will upon him, without making any effort to protect him, after the necessity arises, and the opportunity is afforded in his particular case, such non-action by the State may, in the constitutional sense, amount to a denial by the State of the "equal protection of the laws," but cannot amount to the denial of rights under the "due process" clause, within the constitutional sense.

When, however, the State accuses the citizen, and takes him into custody to punish him for crime against its laws, he is then entitled to enjoy something more than "the equal protection of the laws" at the hands of the State. His rights, privileges, and immunities, and the power of Congress to protect them, then take on larger form and wider proportion under the "due process" clause. It is not at all necessary in order to sustain this conclusion, to run counter to what is said by Justice Bradley in Cruikshank's case, when it was before the Circuit Court, and which, in substance, was reaffirmed when that case came

before the Supreme Court, and reiterated in Logan's case. Mr. Justice Bradley said, 1 Woods Rep. 308, 314-16:

"When any of these rights and privileges are secured in the Constitution of the United States, only by a declaration that the States or the United States shall not violate or abridge them, it is at once understood that they are not created or conferred by the Constitution, but that the Constitution only guarantees that they shall not be impaired by the State or the United States as the case may be. The fulfillment of this guaranty by the United States is the only duty with which that government is charged. Affirmative enforcement of the rights and privileges themselves, unless something more is expressed, does not devolve upon it, but belongs to the State government as a part of its residuary sovereignty."

The doctrine we contend for, is only that, when the State undertakes to perform the duty, Congress may aid in "the fulfillment of this guaranty," by the passage of appropriate laws to accomplish that end.

Federal law which punishes the attack upon the right, when the State attempts to afford its enjoyment, is not "affirmative enforcement of the right." That would require power in Congress to originate "due process," to constitute the tribunals to afford it, and to punish men for the violation of the laws of their State. It would put the State government in the control of Congress. The "negative" enforcement of the right at the hands of the State by the operation of Federal laws, only declares to the mob, "the State may punish offenders against its laws as these laws provide, but you shall not punish a citizen of the United States for crime, when the State is seeking to punish him," and is in no way vicious. It usurps no power of the State. It does not create "due process." It does not originate rights. It takes no concern in the violation of the State law, leaving the mob still amenable to it, and deals with its members only because their acts attack a right given by the Constitution itself.

The right of Congress to move in this matter is clear even under Justice Bradley's test. In this clause "something more is expressed." There is much more than recognition of the right and prohibition against its denial. The right is not secured "only" by a declaration that the State "shall not abridge or deny it." This clause as to "due process" has not merely recognized an existing right of the citizen, and forbidden its denial by the State, but, as to the particular phase of the right with which we are here concerned, the clause, by the force of the very term, "due process of law," after recognizing the right and forbidding its denial, has gone the full length of defining it, and prescribed what is necessary to constitute enjoyment of it, in the constitutional sense, by pointing out the channels and modes in which the State shall exercise certain functions, and has commanded the State to perform them, and empowered Congress to see that it does so; to the end that the citizen shall have enjoyment, at the hands of the State, of rights and immunities the amendment intended thus to safeguard and protect. The only debatable question here, therefore, is whether these exactions of the Constitution and the laws, have secured this right to the citizen. It is impossible to conceive of any right "accorded by, arising under or dependent upon the Constitution or laws," if a right is not so secured, when the Constitution not only recognizes the right, and prohibits its denial, but prescribes what is necessary to constitute enjoyment of the right, and fixes the modes and channels in which the duty of protecting it shall be exercised, points out who shall afford the right, and then gives Congress special authority to enforce performance of that duty, which Congress has exercised by punishing persons who conspire to deprive the citizen of the enjoyment of that right. That this clause of the Constitution thus grasps and defines the citizen's right to enjoy administration of judicial procedure at the hands of the State,

when it takes the citizen in custody to punish him for crime, seems quite clear.

DUE PROCESS CLAUSE HAS DONE MUCH MORE THAN RECOGNIZE  
AND FORBID DENIAL OF RIGHT HERE CONCERNED. IT  
HAS DEFINED AND SECURED IT.

The phrase, "due process of law," has had a well defined meaning for ages. It came down to us from the jurisprudence of the mother country. All the rights and immunities secured by it, were acknowledged and protected by the government of our forefathers in the Colonies. After they created the United States, they employed the phrase in the Vth amendment to secure enjoyment of these rights at the hand of that government. In time, they felt the necessity of using the same terms in another amendment, in order to secure enjoyment of the same rights at the hands of the State. In view of its history, and the settled meaning of the phrase, the use of the phrase in the XIVth amendment imbedded in the Constitution certain rights of the citizen, when the State takes him into custody to punish him for crime, and defined in what they shall consist, and how they shall be enjoyed, and what the State must do, and what the State must not do, as clearly and peremptorily as if all these rights and duties had been placed in the amendment by enumeration and elaborate description. This much is settled by the decision in the case of *Hurtado v. California*, 110 U. S. 156. The Supreme Court of the United States there declared, that the XIVth amendment in its requisition concerning "due process," is not "too vague and indefinite to operate as a practical restraint." The sum of the rights, privileges and immunities which the citizen, when confined on accusation of crime, is entitled to enjoy by the force of the terms of the XIVth amendment, is stated in that case, to be, in the language of Mr. Webster, in his familiar definition, the operation of the

general law, "a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial." In short, as therein decided, the clause confers upon the citizen, when imprisoned on accusation of crime against the laws of the State, the right, privilege or immunity to have the State afford him due administration of its "established course of judicial procedure."

What does the administration of the established course of judicial procedure require to be done for the citizen in such a case? What constitutes enjoyment of the benefits? Having put the accused in prison upon accusation of crime, the State must inform him of the nature and cause of the accusation against him. It must safely keep him in prison until it brings him before a tribunal, where he has the opportunity as well as the right to appear, which proceeds upon fixed principles, and not arbitrarily. When it brings him there, it must compel his witnesses to attend, if they will not come. It must confront him with his accusers in open court, and give him the right and opportunity to examine them. The tribunal must hear him and his witnesses before it condemns him. If he is acquitted, he is entitled to go forth unharmed. If he is found guilty, he has the right, and must have the opportunity, to present whatever he can in arrest of judgment, before sentence is pronounced. If he is sentenced, even to death, he still has the right to life until the sentence is executed, in the mode and time, and by the authority, prescribed by law.

In Alabama, the State gives him something more, which this clause of the Constitution, as it requires the administration of the State's established Code of judicial procedure, commands it also to afford the citizen. He must be indicted and tried by a jury of his peers. He has a right to except to the rulings of the judge. He has the right to appeal and to suspend the execution of the sentence until the case is determined in the appellate court. These



latter rights, the State, which is supreme save as restrained by the Constitution of the United States, may deny to or withdraw from its citizens; but the fundamental privileges and immunities of the right as first described above, which have been defined in the jurisprudence of English speaking peoples and imbedded in the Constitution, can not be taken away by the State. The only reason they cannot be taken away by the State is, because the enjoyment of the benefits of these rights at the hands of the State, is secured to the citizen by the Constitution of the United States.

It needs no argument to show that private individuals, who take a prisoner from the protection of the officers, and murder him, to punish him for crime, and to prevent his having the opportunity to enjoy the benefits of the administration of judicial procedure, when the State is endeavoring to afford it, do, in the Constitutional, as well as in every other sense, deprive the prisoner of the administration of judicial proceedings at the hands of the State. Has Congress no power to punish such acts as offenses against the United States?

#### SOME AXIOMS IN OUR JURISPRUDENCE.

Before proceeding further with this inquiry, let us recall some utterances of the Supreme Court, which are now axioms in our jurisprudence.

"The United States are a nation, whose powers of government, legislative, executive, and judicial, within the sphere of action confided to it by the Constitution, are supreme and paramount. Every right accorded by, arising under, or dependent upon, the Constitution, may be protected and enforced by such means and in such manner as Congress, in the exercise of the correlative power of protection and of the legislative powers conferred upon it by the Constitution, may, in its discretion, deem most eligible and best adapted to attain the object."—*In re Quarles and Butler*, 158 U. S. 535.

"Rights and immunities accorded by or dependent upon the Constitution of the United States can be protected by Congress. The form and manner of that protection may be such as Congress, in the legitimate exercise of its legislative power, shall prescribe, and may be varied to meet the necessities of the particular right."—United States v. Reese, 92 U. S. 214.

"A right whether accorded by the Constitution of the United States, or only guaranteed by it, even without any express delegation of power, may be protected by Congress in such manner and form as Congress in the legitimate exercise of its discretion, shall provide."—Prigg v. Pennsylvania; 16 Peters, 539.

"The Fourteenth Amendment makes no attempt to enumerate the rights it designs to protect. It speaks in general terms, and these are as comprehensive as possible. Its language is prohibitory, but every prohibition implies the existence of rights and immunities."—Strauder v. West Virginia, 100 U. S. 303.

It is a familiar rule in construing the Constitution, that new provisions, originating in larger experience, securing the liberty and rights of the citizen, are to have a liberal construction according to the spirit, rather than a narrow construction according to the letter. The Supreme Court has declared of prohibitions put up the government for the protection of personal rights of the citizen, that

"A close, literal. construction deprives them of half of their efficacy, and leads to gradual depreciation of the right, as if it were more in sound than in substance. It is the duty of the courts to be watchful of the constitutional rights of the citizen."

#### THE END REQUIRED.

Ordinarily, "when the end is required, the means are given." What is the end required here? Plainly, that Congress shall see that the citizen, when proceeded against by the State, shall have judicial administration at the hands of the State. His enjoyment of it can be prevented only when the hands of the State withhold it, or its outstretched arm is stricken down by others as it attempts to

afford it. Naturally and ordinarily, "the means" to secure the right when the State endeavors to afford it, are to throttle those who fight its efforts. Congress is armed with ample power to see that the citizen has the benefit of this right at the hands of the State. Upon what principle, must a power so august that it is armed with strength to deal with a State, shrink into insignificance and fall down the moment a private individual defies its purpose? Is it that the exercise of the power changes the laws or derogates from the authority of the State? The execution of "appropriate" laws by Congress in this particular accomplishes only what the State laws intend to effect for the right, and thus the United States in vindicating its own laws against individual transgression, reaches the same end, without changing the laws of the State, or touching its authority and dignity. What consideration, then, which gives the slightest importance to the purpose of the XIVth amendment, authorizes us to hold that the very words which breathe life into the power of Congress to enforce the right of the citizen to have administration of the State's established course of judicial procedure at its hands, entertained and expressed at the same time, in those same words, a purpose to deaden the power, by withdrawing from it all authority to protect the means of saving enjoyment of the right at the hands of the State, when it endeavors to afford it, against hostile acts of lawless private individuals? The chief evil which defeats the purposes of the amendment is lawless violence by private individuals; and surely that was not unknown to the framers of the amendment and the people who adopted it. What warrants us in saying they did not have it in mind, and did not intend to provide against it? As Chief Justice Marshall said in the Dartmouth College Case, "It is not enough to say that this particular case was not in the minds of the convention when the article was framed, nor of the American people when it was adopted. It is neces-

sary to go further and to say that had this particular case been suggested, the language would have been so varied as to exclude it, or it would have been made a special exception." Why may not Congress vary the exercise of its power "to meet the necessities of the particular right?" Does not this lesser power of dealing with individuals, unless withdrawn by the terms of the XIVth amendment, inevitably spring out of the greater power it confers to deal with States? Do not such acts of private individuals, under such conditions, defeat the purposes of the amendment by destroying the citizen's only means of enjoying the benefits of the immunity the amendment intends to secure to him, by requiring the performance of the duty by the State? If we regard the rule that "when the end is required, the means are given," the right of Congress to punish such lawless private individuals is plainly implied in the power given in the amendment. *McCulloch v. Maryland*, 4 Wheaton, 539; *Prigg v. Pennsylvania*, 16 Peters, 539; *Legal Tender Cases*, 12 Wall, 536; *The Legal Tender Case*, 110 U. S. 421.

The amendment created a citizen of the United States, and gave him some new immunities as such, and empowered Congress "to enforce" them. One of these immunities was the right to enjoy "due process" at the hands of the State which, prior to the amendment had not been of constitutional concern to the general government. The affording of "due process" by the State thus became a matter of national concern, and if need be, of national supervision. The right to enforce performance of a duty involves the right to take part in it, if need be. The guarantor has the right, if not the duty, to make up what the principal fails in performance, to make performance complete. Nevertheless, it was not the intention of the State in adopting this amendment, to confer power on the general government to undertake the general or initial duty of affording "due process" within the State. The

purpose was that the State should continue to administer justice and to punish crime subject to the authority conferred by that amendment upon Congress to enforce performance of it, in order to give the citizen the protection it thereby intended to effect. When the State must continue to discharge the duty, and is forbidden in the performance of it to deprive any one of "due process" of law, the prohibition necessarily becomes an absolute and peremptory command that the State shall afford administration of judicial procedure to all persons, and certainly to all citizens, when the State proceeds against them to take away life, liberty or property.

#### THE FAIR CONSTRUCTION OF THE CLAUSE.

Unless we surrender abjectly to the witchery of grammatical expression and utterly desert the spirit of this clause, we must hold that the command that "no state shall deprive," is only another form of command that "each State shall afford," the administration of "its established course of judicial procedure." It is not meant by this, that the citizen shall have actual administration of judicial procedure at the State's hands in every case, but that the least extent of the command is, that the State shall strive to afford it, in individual cases, by regular and orderly proceedings in a court of justice, according to certain well established principles, in which the citizen has the opportunity as well as the right to participate. This being the least extent of this clause, it necessarily exacts something more for the citizen than the mere right to have the State pass proper laws, and furnish proper officers who stand ready to execute them. This clause confers upon the citizen the right to have the State's machinery of justice put in motion and kept unimpeded in the hands of the State in every stage of its work, in his individual case, to the end that the citizen may enjoy its final and just results. If the clause imports, in a case like

this, only a command that the State shall strive to afford the citizen the benefit of its established course of judicial procedure, is it not clear that lawless violence of private individuals which renders the State's efforts futile, directly and inevitably defeats the citizen's enjoyment of the immunity? If so, why may not Congress which is empowered "to enforce" the command, punish private individuals who prevent performance of the duty, and thus kill enjoyment of the right? Such exercise of power is certainly "appropriate." Such exercise of power only upholds the hands of the State in discharge of a constitutional duty, against others who seek to strike them down. It goes not one whit further. The exercise of such power by Congress is nowhere prohibited. On the contrary, the duty and the power "to enforce" the constitutional demand, necessarily, imply and convey the power to punish acts which frustrate and defeat its purposes. Denial by the State does not bring the immunity into existence. It is created by the Constitution in advance of denial, and to prevent denial. The right here, differing from the immunity under "the equal protection" clause, is a positive right, and is equally within the constitutional protection, whether the State attempts to deny or to accord enjoyment of it. It is utterly illogical, therefore, to contend that the citizen has no constitutional immunity to protect, unless the State attempts to withhold or to destroy it; and that when the State attempts to obey the Constitution, that very act of obedience to the Supreme law, immediately puts the right outside of the Constitution, leaving nothing which it can protect. The most restricted and technical meaning which can be put upon the words of this clause, is that they confer a right or immunity upon the citizen, in a case like this, to enjoy judicial procedure at the hands of the State. When lawless violence of private individuals strikes down the helping hands of the State, while it is endeavoring to afford the right, is

not the citizen, in the most literal sense, deprived of his enjoyment of judicial procedure at the hands of the State?

Power "to enforce" a right carries with it power to protect the means by which it is enjoyed. It is said the power is wanting, because it is not expressed. Of such an argument, the Supreme Court has said:

"It destroys at one blow in construing the Constitution of the United States, the doctrine universally applied to all instruments of writing, that what is implied, is as much a part of the instrument as what is expressed. The principle, in its application to the Constitution of the United States more than to almost any other writing is a necessity, by reason of the inherent inability to put in words all derivative powers; a difficulty which the instrument itself recognizes, by conferring on Congress the authority to pass all laws necessary and proper to carry into execution the powers expressly granted, and all other powers vested in the government or any branch of it by the Constitution.—Art. I, Sec. 8, Clause 18."

COROLLARY AS TO POWER OF CONGRESS FROM FOUR DECISIONS.

It is an inevitable corollary from the decisions of the Supreme Court, in *Ex Parte Virginia*, *Ex Parte Yarbrough*, in *Re Neagle*, and *Ex Parte Seibold*, that Congress has ample power to legislate for the protection of State officers in discharge of their duties, as representatives of the State, under the XIVth amendment. Has not the United States a "direct interest" in securing the successful performance of the duty the amendment puts upon the State? Is not the duty due "to the United States as well as to the State?" Is not the performance of the duty the XIVth amendment requires of State officers, of as vital concern to the United States as the performance of the duty required of State officers by the Federal statutes, involved in *Ex Parte Seibold*, *supra*? The fact that the officer is a State officer, and that he executes State laws, does not change the function he performs, so

as to put it without the power of Congress to protect it, if the Constitution of the United States requires him as the representative of the State to perform that function, in the discharge of duties the Constitution puts upon the State. It is the nature of the power, and not the office of the person who executes it, which determines its character. *Ex Parte Virginia*, *Supra*. In the language of the Supreme Court in *Ex Parte Yarbrough*, *supra*, "the power" to protect the officer while so engaged, and the citizen held in his custody,

"Arises out of the circumstance that the function in which the party is engaged, or the right which he is about to exercise, is dependent on the laws of the United States. In both these cases it is the duty of the government to see that he may exercise the right freely, and to protect him from violence while so doing or on account of so doing."

UNANIMOUS DOCTRINE OF SUPREME COURT AS TO THE PEACE:  
OF THE UNITED STATES.

There were dissenting opinions by two of the justices in *Re Neagle*, *supra*; but none as to the following declaration in the majority opinion, in which the dissenting judges explicitly concurred:

"It is argued that the preservation of peace and good order in society is not within the powers confided to the government of the United States, but belongs exclusively to the States. Here again we are met with the theory that the government of the United States does not rest upon the soil and territory of the country. We think this theory is founded on an entire misconception of the nature and powers of that government. We hold it to be an incontrovertible principle, that the government of the United States may, by means of physical force, exercised through its official agents, execute on every foot of American soil, the powers and functions that belong to it. This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to



that extent. This power to enforce its laws and to execute its functions in all places, does not derogate from the power of the State to execute its laws at the same time and in the same places. The one does not exclude the other, except where both cannot be executed at the same time. In that case the words of the Constitution itself show which is to yield. 'This Constitution, and all laws which shall be made in pursuance thereof, \* \* \* \* shall be the supreme law of the land.' Without the concurrent sovereignty referred to, the national government would be nothing but an advisory government. It must execute its powers, or it is no government. It must execute them on land as well as on the sea, on things as well as on persons. And, to do this, it must necessarily have power to command obedience, preserve order, and keep the peace; and no person or power in this land has the right to resist or question its authority, so long as it keeps within the bounds of its jurisdiction."

KINDRED POWER EXERCISED IN PROTECTING STATE OFFICERS  
IN DISCHARGE OF DUTIES. UNDER OTHER CONSTITU-  
TIONAL CLAUSES.

Congress is given no power to enforce the duty put upon the State by Section 2 of Article IV, to deliver up a fugitive from justice upon demand of the executive authority of another State; yet when the State undertakes to obey the command, and enters upon the performance of the constitutional duty, Congress steps in and punishes private individuals who interfere with the agent of the demanding State in the discharge of his duty. Revised Statutes, Section 5279. The constitutionality of this exercise of power by Congress has never been doubted. In *Robb v. Connolly*, 111 U. S. 635, the contention was that a State court had no jurisdiction on habeas corpus, to discharge a fugitive in the custody of the extradition agent of a State, because Robb was acting "under the authority of the United States, and executing the power of the United States," and therefore, the Federal court alone

had jurisdiction of such a proceeding. The Supreme Court held that the Federal Courts did not have exclusive jurisdiction, because Robb was not an officer of the United States, "within the meaning of its former decisions" on that subject. It did not hold that Robb was not an officer of the United States, or exercising its authority, but only that he was not such an officer as brought the discharge of his prisoner, within the reason of the rule that only Federal authority could release him. It did hold that the agent, while in the custody of the prisoner, is "in a certain sense in the exercise of authority derived from the United States," but that that circumstance did not give the courts of the United States exclusive jurisdiction within the reason of former decisions, because, among other reasons, "he owes no duty to the national government for a violation of which he may be punished by its tribunals." In *Ex Parte Virginia*, supra, the Court held as State officers discharge duties imposed upon them, as representatives of the State, under the XIVth amendment, they may be punished by Congress for failure to perform them. If Congress has no implied power to aid State officers in the enforcement of duties required of them under the Constitution, Congress certainly had no power to pass the statute protecting the agent of the demanding State in the discharge of the duty imposed on the State under Section 2 of Article IV; for that section of the Constitution gave no express authority, and it is expressly held in *Kentucky v. Dennison*, 24 Howard, 66, that it was "only declaratory of the moral duty of the duty of the State." If the court had thought that Congress had no implied power to protect the agent of the State by the passage of the statute referred to, that would have shattered the only foundation upon which the State agent contended for the exclusive jurisdiction of the Federal court, and the case would undoubtedly have gone off by a decision by the court that Congress had no such power. The decision there ren-

dered plainly recognizes the power. The validity of Section 5279 of the Revised Statutes, which has no grounds to stand on except that Congress has implied power to aid State officers in the performance of duties required of the State, was again recognized in *Lascelles v. Georgia*, 148 U. S. 41, where the court, speaking of Art. IV, section 2, of the Constitution, and sections 5278 and 5279 of the Revised Statutes, said: "Upon these provisions of the organic law and statutes of the United States rest exclusively the right of one State to demand and the obligation of the other State upon which the demand is made, to surrender the fugitive from justice." What difference is there, in constitutional principle, between legislation of Congress which punishes private individuals who rescue a fugitive from justice, in the custody of the agent of the demanding State, to prevent his being delivered as required by Section 2 of Article IV, of the Constitution, and legislation which punishes persons who take a prisoner from the custody of State officer and murder him, to prevent them from discharging a duty required under Section I of the XIVth amendment? The power is greater in the latter than in the former instance; since in the former, Congress is without right to compel performance of the duty by the State, while in the latter, the Constitution gives express power "to enforce" it. This distinction is adverted to, in *Ex Parte Virginia*, 100 U. S. 347.

ANALYSIS OF OBJECTIONS TO EXISTENCE OF THE POWER IN  
CONGRESS.

The only answer vouchsafed to these considerations is, that the constitution contemplates that the protection of these immunities shall be worked out only through the efforts of State officers in the execution of State laws; and, that therefore, the only lawful way the United States can aid in securing their enjoyment against destruction by private individuals, is to lend its physical assistance, if

called upon to do so, under Section 4 of Article IV of the Constitution, to crush resistance to State laws and State officers. The precise reasons upon which that insistence is rested, are not clearly defined.

There is no foundation for that position, unless upon the grounds; either that Congress has no power to punish a private citizen for a violation of a state law, and that such is the case here; or, that it is usurpation of State power for Congress to punish acts of that kind as a violation of Federal law, because they constitute a violation of the laws of the State; or, because the power has not been conferred upon Congress. Certainly, the United States has no power to punish a citizen for resisting the laws of the State; but it is also as well settled that the same physical act may constitute a violation both of the laws of the State and of the United States, according to the intent and effect of the act, as to a right secured or granted by the laws of either. *Ex Parte Seibold*, 100 U. S. 37; *Waddell v. United States*, 112 U. S. 76. Where a person is punished by Federal authority for taking a prisoner from the officers of the law and murdering him, to prevent his enjoying a right secured to him by the Constitution, the law-breaker is not punished for any wrong done the State, for which he still remains amenable to its laws; but, because his acts wreck a right, the enjoyment of which is protected by the Constitution, and a violation of which constitutes a transgression of the laws of the United States. Since the Constitution is the supreme law, and the States by adopting the Constitution and amendments conferred upon the general government power to protect any right the fundamental law secured, such punishment by Federal authority is neither usurpation, nor invasion of the authority or reserved rights of the States. The contention at last, is only that Congress cannot exercise the power here, because it has not been expressly given, by a proposition of which the Supreme Court has said:

"It is supported by the old argument often heard, often repeated, and in this court never assented to, that when a question of the power of Congress arises, the advocate of the power must be able to place his fingers on the words which expressly grant it."

It seeks to misapply the doctrine, that Congress cannot protect rights which are not dependent upon or accorded by the Constitution to rights which arise out of or are dependent upon the Constitution, which Congress has always had power to protect, and thus to repudiate the power of Congress to secure the latter rights, by stripping them of their real character.

The XIVth amendment surely gave or secured to the citizen some new immunity which the Constitution took under its protection, and it expressly conferred upon Congress new power to enforce something. The object in imposing the duty upon the State was that its performance would result in the protection the clause designed to effect. The object in conferring the power was, that Congress should have the means of making performance of the duty successful.

Will any candid man deny that in many communities the American citizen has no rights which the mob is bound to respect, and that if it be strong in numbers, and the victim uninfluential and helpless, it may with impunity, in almost any community, punish him without trial in the courts, whenever it so chooses? Governors and judges generally do their duty. There are peace officers who will protect the prisoner even to the shedding of blood, but not so with most of them. The local juries almost invariably betray and subvert their powers under the Constitution and laws, to grant absolution and pardon to the members of the mob, whenever the officers of the State endeavor to bring them to justice. The protection of the American citizen rests at last, not upon the law, but entirely upon the temper and turbulence of the locality,

in which he most needs to enjoy protection by law. The law has long since lost all deterrent force. That community feels that the State can not execute its laws in the face of the public opinion in that community, however abhorrent mob violence may be to the conscience of the State, and the manhood and interests of the great body of the people. It knows that the sword of justice is at last entrusted solely to the keeping of the lyncher, and it continues the evil of its ways, in the assured conviction that he will always wield it, to the confusion of the law, in defence of his fellow criminals. Such conditions crown, and will continue to crown, local depravity and weakness absolute monarchs over the lives and liberties of American citizens, so long as we continue to hold to the doctrine, that the power given Congress in the XIVth amendment may enforce the citizen's protection in the theory of law, but is powerless even to aid the State in affording it in fact.

The argument against the power of Congress attaches no importance to the fact that larger experience demanded and accomplished, fundamental changes in the relation of the United States to the States as to the protection of the citizen in the matter of due process, and made it a matter of national concern whether the efforts to afford it succeeded, and it entirely forgets that it armed Congress with new power to that end. The argument is bottomed upon a past constitutional status of the citizen as determined by the Constitution prior to the recent amendment, when citizenship of the United States was thought to be largely a mere attribute of citizenship of the State, and when the rights with which we are here concerned were committed exclusively to the protection of the State,—a time which the Supreme Court of the United States describes as "historical, and of another age." *Slaughter House Cases*, 16 Wallace 67. The amendment did not intend that that state of things, appropriate only to "another age," should continue. It intended to change

the condition of things. It intended to commit the Federal protection of the rights it designed to secure, if need arose, to legislation to be administered through the courts of the United States, and not to commit them to the guardianship of the sword, much less a sword, which the United States could draw only at the call of the State. The result of the contrary insistence is that the protection of these rights of the citizen, so long as the State endeavors to afford it, although ever so unsuccessfully, can never become a matter of concern to the United States, unless the State chooses to give it that character by appealing to the Federal government for the help of its sword to defend the Federal right, the enjoyment of which, if reliance must be wholly upon State law, can be protected only when the state laws in this regard are successfully executed. Whether the protection of such rights was or ought to be a matter of concern to the United States, was a question for the determination of the State, only while the amendment was pending. The moment the amendment was adopted, it made the opinion of the States in that regard immaterial, and converted the protection of the right into a matter of national concern, without reference to any future attitude of the State. The argument against the power of Congress, strips it of any means whatever to protect the right against one of the chief evils which destroy its enjoyment. It gives Congress no more power to protect the right against attacks of private individuals, than it had prior to the adoption of the amendment, and as to that phase of the evil, practically blots the amendment out of existence. It treats the amendment simply as a penal enactment against the State. It altogether forgets that it is a solemn recognition by the whole people of the necessity for greater power to protect the citizen, and that they granted a benevolent power to secure his fuller protection. Crystallized in its last analysis, it inevitably asserts Congress has

no power to protect enjoyment by the citizen of a right "accorded by or dependent upon the Constitution," against assaults of private individuals, because that result ought to be, or might be, worked out by the execution of State laws; a doctrine which the Supreme Court from its earliest history has uniformly and repeatedly repudiated. *McCulloch v. Maryland*, 4 Wheaton 316; *Prigg v. Pennsylvania*, 16 Peters, 539; *Logan v. United States*, 144 U. S. 283; *In Re Quarles & Butler*, 158 U. S. 535.

CONGRESS HAS AUTHORITY TO AID THE STATE IN THE DIS-  
CHARGE OF ITS CONSTITUTIONAL DUTY, AND HAS EX-  
ERCISED IT.

Upon reason and authority alike, we conclude that the government of the United States has the right to deal with the evil of lynching prisoners, held by State officers for trial upon accusation of crime against the State, under three distinct, though kindred heads of power. 1. It may punish violence done to officers, to prevent the performance of their duty, because they discharge a function enjoined upon them by the Constitution, as a necessary means to a constitutional end, which Congress is specially empowered "to enforce." 2. It may punish violence done to the prisoner so situated, because the result and intent of such an act are to deprive him of the enjoyment of a right or immunity secured to him by the Constitution of the United States. 3. As a sovereign, it may punish resistance by a mob to State officers in the exercise of duties imposed upon them by the Constitution, and violence inflicted upon the prisoner while in their care; because such acts are breaches of the peace of the United States, where the Constitution puts the duty upon the State officer, and secures the right to the prisoner to enjoy the benefit of its performance, when the State is endeavoring to give the right.



Congress has already exercised this power in large measure. Section 5508 of the Revised Statutes punishes a conspiracy "to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States," etc. Section 5509 provides that for "any other felony or misdemeanor" committed in the execution of the conspiracy, the offenders "shall be punished for the same, with such punishment as is attached to such felony or misdemeanor by the laws of the State in which the offence is committed." These sections meet nearly all of the evils of lynching of prisoners in the hands of the officers of the law, except in the case of an officer who from cowardice or indifference fails to make any effort to protect his prisoner from the mob. This power, it is hardly necessary to say, does not reach the evils of mob violence, when the citizen is not in the hands of the officers of the law; since the immunity of the citizen here arises from the constitutional right to enjoy the administration of justice when the State attempts to afford it. The Constitution does not reach out, in this regard, to protect the citizen while he stands in other relations to his fellowman, the protection of which is committed solely to the State.

DOCTRINE DOES NOT TRENCH UPON POWER OR DIGNITY OF  
STATE IN ANY WAY.

There is no plausible ground for the apprehension, sometimes expressed, that the principle which upholds this power of the United States, would withdraw from the State, and transfer to the United States, jurisdiction of every ordinary murder, assault and battery, or trespass upon the life, liberty or property of the citizen, or interfere with the internal concerns and reserved rights of the State. It is to be observed that the power does not touch any acts, except wrongs to officers, prisoners or suitors.

or others actually engaged in the administration of justice, or exercising rights in courts, when such acts prevent the performance of the duty of administering the State's established course of judicial procedure, when it endeavors so to do. The administration of such functions involves rights "arising under, accorded by, or dependent upon the Constitution of the United States." Federal power to punish such acts, invades no right of the State to order persons and things within its borders, or to dispense justice and punish crime. The exercise of such power cannot interfere in any way with the freedom of the State to legislate, as its local conditions and traditions may dictate, in order to promote the interests and aspirations of its people, in the way which to it seems best. It does not usurp or hamper the exercise of those political powers which are essential to the preservation of the dignity and authority of a State in an "indestructible Union composed of indestructible states." The State, so long as it does not make invidious discrimination, is still unfettered in determining what is best for its internal concerns and domestic affairs. The only requirement of the "due process" clause in this regard, is merely that when the State attempts to administer justice in her courts, and takes the preliminary steps to make its justice effective, by process against the person or property of the citizen, it must, no matter where that court is held, or where the person or citizen is found, give him the enjoyment of its "established course of judicial procedure," the fundamental principles of which, and the modes in which it is to be administered, this clause recognizes and adopts, and makes its own, with power in Congress "to enforce"; but none to create new rights, or afford "due process" other than as defined in the Constitution itself.

#### MORAL AND LEGAL CONSEQUENCE FOR GOOD.

The only legal or moral consequence, and surely it is not for evil, is that when Federal power punishes lawless

violence of private persons who defeat the enjoyment of that right at the hands of the State, it puts the power of the United States behind the power of the State, and by bringing the independent but concurrent power of the United States to accomplish the purpose of the amendment, guards the State's altar of justice with two swords instead of one, and thereby the more firmly secures the enjoyment of a great right, which, though primarily to be afforded by the State, has since the adoption of the amendment become the birthright of every citizen of the United States, and an object of the highest solicitude to the government and people of the United States alike. It will suppress bad public opinion, and brute passion in depraved or morally weak localities, by adding greater majesty and sanctity to those altars which mete out justice as to the things which lie close about our homes, and it will impress upon all, in ways that all will understand and heed, that the taking off of an American citizen while in the hands of the law, otherwise than by the hands of the law itself, is no longer without the concern or the power of the United States.

REPORT OF  
Committee on Jurisprudence and Law Reform

BY  
H. S. D. MALLORY.

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*Mr. President and Gentlemen of the Alabama State Bar Association:*

The Committee on Jurisprudence and Law Reform, have no report, other than this formal one. It is made the duty of the Committee to consider proposed changes in the law and report on such as it thinks should be brought to the notice of this body. No proposed changes have been brought to our notice. The Committee would have been pleased to have somewhat gathered and digested contemplated changes in the laws in other states, but have had no opportunity to do so.

Respectfully submitted,

H. S. D. MALLORY,

Chairman.

REPORT OF  
Committee on Correspondence  
BY  
FREDERICK G. BROMBERG.

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*To the President and Members of the Alabama State Bar Association:*

Your Committee on Correspondence have to report as follows:

MARRIAGE AND DIVORCE.

Nothing in the way of legislation has been accomplished since our last meeting in the matter of securing greater uniformity of laws relating to marriage and divorce. Several religious convocations have had the subject under consideration, but human wisdom seems unable to suggest any legal method of remedying the evils growing out of our divergent laws on the subject of marriage and divorce. The only solution upon which there appears to be any agreement is an amendment to the Constitution of the United States, but it seems to us that the whole problem is too much affected by close relation to religious ideas to make an amendment of the Constitution of the United States a practicable solution thereof. We probably shall have to rely upon the improved conscience of the individual for a cure of the principal evils of divorce.

## UNIFORMITY OF LEGISLATION.

The number of states now having permanent commissions remain as at our last report, viz: Thirty-one states and one territory.

## UNIFORM NEGOTIABLE INSTRUMENTS ACT.

Since our last report your Committee has learned that Louisiana, Nebraska, Kansas and Wyoming have adopted the uniform negotiable instruments law, making today the act operative in twenty-seven states and territories, as well as the District of Columbia. They are as follows: Arizona, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Montana, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Washington, Wisconsin and Wyoming.

The American Lawyer, May, 1905, says "the advantages of this piece of legislation are so manifest that there should be no doubt as to the advisability of adopting it." In this connection it is of some interest to have the expression of opinion of Professor James Barr Ames, Dean of the Law School of Harvard University. In acknowledging a copy of the report of the Association of 1904, he says: "I was much interested in reading your report as Chairman of the Committee on Correspondence, and in learning that you originated the idea of a uniform N. I. L., in this country so long ago as 1886."

Respectfully submitted,

FREDERICK G. BROMBERG,  
Chairman.

REPORT OF  
Central Council.

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*To the President and Members of the Alabama State Bar Association:*

The Central Council of your Association respectfully begs leave to submit the following report:

Since the last meeting of this Association this Council has had before it and passed upon eight charges preferred against as many practicing attorneys at law in this State. After careful, and in some instances, extended investigation, the charges were disposed of as follows:

Dismissed seven; prosecution for disbarment in the manner provided by law, none; cases continued, one.

Your Council received from its predecessor the surrender of the license of one attorney, against whom charges had been preferred before the Council, to be presented to the Supreme Court of Alabama for record under the provisions of Section 6 of An Act to Amend Sections 598, 599, 600, 601, 603, 605, 606 and 610 of the Code of Alabama, approved October 3, 1903. At the time this surrender was received the Supreme Court was not in session, and before the Court convened the attorney concerned served notice on the chairman of the Central Council in which he attempted to treat the surrender as a power of attorney, and revoke the same. This notice was laid before the Council, and considered adversely to his conten-

tion and the surrender ordered filed with the Supreme Court, which was accordingly done. The Supreme Court on yesterday directed the Clerk to make a record of such surrender. Many complaints of supposed misconduct of attorneys have been informally brought to our attention. The Council has proceeded, and must continue to proceed, with much care in order to prevent the Association from degenerating into a collection agency and depository for pent up spleen. In some instances we have been called upon to supplant the Court and even usurp the jurisdiction of our courts of last resort. Against all such temptations we have modestly but steadfastly set our face.

#### SUGGESTIONS.

We may be pardoned for suggesting that Section 6 of Act above referred to be amended so as to make it clear at what stage of the proceedings, and to whom, the surrender of license may be made, and by whom presented to the Supreme Court. We are further of the opinion that if the members of the profession would familiarize themselves with the Code of Ethics of our profession, as well as those provisions of the Code prescribing the duties of attorneys, the number of complaints and causes of complaints against attorneys would be lessened, and we would suggest that if the *nisi prius* courts would require at the convening of each regular term of court a public reading of this Code of Ethics and the provisions of the Code governing the duties of attorneys, the duties and obligations of an attorney would be better understood by themselves, their clients, and the public, and such a course would elevate and dignify not only the law, but the profession as well, before the bar of public opinion.

While the By-Laws of this Association require that the Central Council shall make no report to any meeting of



the Association unless such report is required by the Association, and then shall only report as to the particulars about which they are required to submit reports, yet the Committee has thought it advisable to present this report.

Respectfully submitted,

W. W. CALLAHAN, Chairman.

JOHN LONDON,

S. D. WEAKLEY,

A. S. VAN de GRAFF,

CHAS. P. JONES.

REPORT OF  
Committee on Legislation

BY  
A. T. LONDON.

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*To the President and Members of the Alabama State Bar Association:*

The Committee on Legislation begs leave to submit the following report:

In examining the By-Laws of the Association we find that this Committee is charged with the duty of ascertaining and reporting in the form of bills or resolutions such legislation as it may approve and consider necessary and proper to carry into effect the suggestions made at previous meetings in reports and papers.

Your Committee has examined several papers and reports submitted to previous meetings of the Association and finds many suggestions made which are certainly entitled to your serious consideration, but it hardly feels justified in doing more at present than again recall them to your attention and request that the several members of the Association making suggestions draft bills at their leisure, covering the several subjects therein referred to and any others that they deem proper and send to the Chairman of the Legislative Committee.

In our limited experience it seems that the most difficult bill to get through the Legislature is one that embodies a general law which works any reform. If this

body wants to affect legislation as it should do, it must get some lawyers elected to the Legislature who are to work for general laws and not be loaded up with local bills as is usually the case.

In the light of the recent decisions of the Supreme Court it is to be hoped that that bane of Alabama, Local Legislation, has received a quietus from which it cannot revive and that the next Legislature will realize that we have a new Constitution which means something and that there are some duties which a Legislator owes the State higher than serving local, individual, and political ends.

And if this Association as a body, and as individuals, will only lend influence to the selection of members of the Legislature who will work for the good of the State at large the amount of good to be accomplished, would, we think, surprise you.

In conclusion your Committee would suggest Hon. J. J. Mayfield, the present Codifier, be appointed Chairman of the new committee on legislation, and that the Secretary be authorized to employ the necessary assistance to transcribe all bills heretofore reported to this Association which have not become laws, and an abstract of all suggestions heretofore made, and to furnish a copy of this material to the Chairman of your Committee on Legislation to be examined and reported on at your next session which will be held before the next Legislature meets.

In justice to our colleagues on the Committee we wish to say that this report has not been submitted to them.

ALEX T. LONDON,

W. L. MARTIN,

For Committee.

## AN ACT

To amend Section 598, 599, 600, 601, 603, 605, 606 and 610 of the Code of Alabama. Be it enacted by the Legislature of Alabama:

SECTION 1. That Section 598 of the Code of Alabama be, and the same is hereby amended so as to read as follows: The Alabama State Bar Association, or the Central Council thereof, has authority to institute and prosecute, or cause to be instituted and prosecuted, in the name of the State of Alabama, the proceedings herein prescribed for the suspension or removal of an attorney.

SEC. 2. That Section 599 of said Code be, and the same is hereby amended so as to read as follows: The accusation must be in writing, and when the prosecution is instituted by the Alabama State Bar Association, or the Central Council thereof, a written statement signed by the President of said Association, or the Chairman of said Council, and attested by the Secretary of said Association, accompanied by written affidavit of any person or persons making charges for suspension or removal of such attorney, if any, taken before any officer authorized by law to administer oaths within or out of the State, setting forth the facts upon which the same may be based, shall be delivered by the Secretary of said Association to the Solicitor of the Circuit in which such attorney resides and thereupon, or when the proceeding is taken by the Court of its own motion, the Solicitor of said Circuit shall draw up such accusation, citing the accused to appear before said Cir-

cuit Court, or City Court, or court of like jurisdiction, on a day named therein, and moving the court for the suspension or removal of such attorney, and have the same served by the sheriff of the county of such attorney's residence, by leaving a copy thereof with the accused.

SEC. 3. That Section 600 of said Code be, and the same is hereby amended so as to read as follows: If the proceedings are upon the information of an individual, the accusation must be in writing, setting forth the facts upon which the charges are based, verified by the oath of such individual, or some other person, taken before any officer authorized by law to administer oaths in or out of the State, that such facts are true, and must be presented to and filed in said Circuit Court, or City Court, or court of like jurisdiction, accompanied by security for costs to be approved by the Judge thereof.

SEC. 4. That Section 601 of said Code be, and the same is hereby amended so as to read as follows: When the accusation is made by an individual the Circuit Court, or City Court or court of like jurisdiction, must if of opinion that the accusation would, if true, furnish grounds of suspension or removal of such attorney, make an order requiring the accused to appear and answer the same at a specified day during that, or the next term, or at any other time, when the court can hear and determine the same, a copy of which, together with a copy of the accusation, must be served upon the accused; provided, that if such order is made, or proceedings are instituted by the court of its own motion, or as provided by Section 2 of this Act ten days before any term of the court, or before the adjournment thereof, such accusation must be made returnable and be heard during said term, unless continued for good cause by the court, upon such terms as it may impose.

SEC. 5. That Section 603 of said Code be, and the same is hereby amended so as to read as follows: The accused may answer such accusation, either by objecting in writing to the sufficiency thereof, or by denying the truth of the facts alleged or setting forth the facts of his defense, which said answer as to facts, by denial or otherwise, must be in writing, signed by the accused and verified by his oath, and the accusation, objections and answer in said proceedings are hereby made of record therein as in other civil suits or proceedings in said court.

SEC. 6. That Section 605 of said Code be, and the same is hereby, amended so as to read as follows: If the accused pleads guilty, or fails or refuses to answer the accusation, the court must proceed to judgment of suspension or removal: if he answer the accusation, the court must immediately, or at such time as it may appoint, proceed to try the same, either side having the right to demand a trial by jury; if no jury is demanded, the court in trying the same shall make and file a statement of the facts established by the evidence, and if the jury is demanded, the jury must make a special finding of the facts, upon issues of facts submitted by the court, and upon such statement of facts by the court, or special finding of facts by the jury, the court must render judgment of acquittal or suspension, or removal, of the accused, as such facts may warrant; provided, however that such accused attorney may stop or prevent such prosecution by a surrender of his license as an attorney in all the courts of the State of Alabama, a record of which surrender shall be made in the Supreme Court of said State.

SEC. 7. That Section 606 of said Code be, and the same is hereby, amended so as to read as follows: The proceedings when instituted by the court of its own motion, or when the written statement hereinbefore provided for has been presented by the Alabama State Bar Association,

or its Central Council, to the Solicitor of the Circuit, in which the accused resides, must be conducted in the name of the State, and when on the information of an individual in the name of the State upon the information of such person; and in all cases the Solicitor of said Circuit shall appear and sustain such accusation, and be responsible for the faithful performance thereof as of other official duties required of him by law; provided, however, that the Court may, upon the motion of said Solicitor, and upon good cause shown, at any time require said The Alabama State Bar Association to give security for the costs of such proceedings to be approved by the Court within ten days from notice to the Secretary of said Association, by said Solicitor, and the hearing of said cause shall be postponed for that time, unless such security shall be sooner given. •

SEC. 8. That Section 610 of said Code be, and the same is hereby, amended so that the same shall read as follows: Either party may appeal to the Supreme Court from any adverse judgment rendered by said Circuit Court, City Court, or court of like jurisdiction, in said proceeding, at any time within thirty days after such judgment, in the manner now prescribed by law for appeals in civil cases, and may reserve by bill of exceptions any question proper to be reserved in civil causes and the judgment rendered in said proceeding, and the Supreme Court may affirm, modify or reserve such judgment, or render such judgment in such proceeding as the Circuit Court, City Court, or court of like jurisdiction, should have rendered.

SEC. 9. Whenever any disagreement or controversy arises between an attorney at law and any other person, respecting the amount of the compensation to which he is entitled by contract or otherwise, and his retention of the same out of any funds in his hands, such attorney may by motion in the Circuit Court, City Court, or court of like jurisdiction, of the county of his residence of which such other

person shall have notice, obtain an order of said court that a certain amount is due him under such contract, or would be reasonable compensation for his services, and when such motion is made and order obtained, such attorney shall not be subject to prosecution, suspension or removal under this act, or other penalty therefor; but nothing herein contained shall affect or destroy any civil action to which any person would be entitled against such attorney respecting the same or any criminal prosecution to which the accused would be otherwise liable.

SEC. 10. All laws and parts of laws in conflict with this act are hereby repealed.

Approved Oct. 3, 1903.



## CONSTITUTION.

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### ARTICLE I.

The object of the Association shall be to advance the science of jurisprudence, promote the administration of justice throughout the State, uphold the honor of the profession of the law, and establish cordial intercourse among the members of the Bar of Alabama. This Association shall be known as "The Alabama State Bar Association."

### ARTICLE II.

Any person shall be eligible to membership in this Association who shall be a member of the Bar of the State in good standing, and who shall also be nominated as hereinafter provided.

### ARTICLE III.

The officers of the Association shall consist of one President, five Vice-Presidents, a Secretary, a Treasurer, a Central Council, and an Executive Committee, which Committee shall be composed of five members, one of whom shall be the Secretary and Treasurer of the Association.

Each of these officers, council and committee, shall be elected at each annual meeting by the Association for the year next ensuing, but the same person shall not be elected President two years in succession. All such elections shall be by ballot. The officers elected shall hold office until their successors are elected and qualified according to the Constitution and By-Laws.

## ARTICLE IV.

The Central Council shall consist of five members, and shall be at all times an advisory board for consultation and conference when called on for that purpose by the President or any Vice-President who may for the time being be acting as President.

## ARTICLE V.

The President, by and with the advice and consent of the Central Council, may establish a Local Council in any county of this State by issuing a warrant to that effect, naming therein the persons composing such Local Council. Each Local Council shall consist of not less than three nor more than seven members. No person shall be eligible to appointment as a member of any Local Council who is not at the time a member of this Association.

## ARTICLE VI.

The Central Council and Local Councils shall have full power to nominate applicants to become members of this Association.

## ARTICLE VII.

Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge. One year's annual dues shall be paid in advance by each member at the time of his election.

## ARTICLE VIII.

By-Laws may be adopted at any annual meeting of the Association by a majority of the members present.

## ARTICLE IX.

The following committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each:

1. On Jurisprudence and Law Reform.
2. On Judicial Administration and Remedial Procedure.
3. On Legal Education and Admission to the Bar.
4. On Publication.
5. On Grievances.
6. On Correspondence.
7. On Legislation.
8. On Local Bar Associations.

A majority of the members of any committee, or of the Central Council who may be present at any meeting of such committee of council, shall constitute a quorum for the purposes of such meeting. Vacancies in any office provided for by this Constitution shall be filled by appointment by the President, and the appointees shall hold office until the next meeting of the Association.

## ARTICLE X.

The Central Council and Executive Committee shall each perform such duties as may be assigned to them by the President, or as may be defined by the By-Laws, except as herein otherwise directed.

## ARTICLE XI.

This Association shall meet annually at such time and place as the Executive Committee may determine, and those present at such meeting shall constitute a quorum. The Executive Committee shall require thirty days' notice of the time and place of meeting, by publication in a newspaper, to be given; which publication shall be made by the Secretary.

## ARTICLE XII.

The President shall open each annual meeting of the Association with an address in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several States and by Congress during the preceding year.

## ARTICLE XIII.

The Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than thirty members are present.

## ARTICLE XIV.

Each Local Council shall perform such duties as it may be called upon to perform by the President, or as may be defined by the By-Laws.

## ARTICLE XV.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association or in his profession, on conviction thereof, as may be prescribed by the By-Laws.

## ARTICLE XVI.

The Constitution shall go into immediate effect. This Association shall be incorporated under the laws of the State of Alabama as soon as practicable, and until such incorporation all money and property of said Association shall be vested in the President and Treasurer, as Trustees thereof, who shall pay over and deliver the same to said corporation as its property as soon as the corporation is created by law.

## ARTICLE XVII.

The two offices of Secretary and Treasurer may be filled by one person, if the Association shall, by its By-Laws, so determine.

## BY-LAWS.

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### I.

The President shall preside at all meetings of the Association, and in case of his absence one of the Vice-Presidents shall preside.

### II.

The Secretary shall keep a record of all meetings of the Association, and all other matters of which a record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association with the concurrence of the President. He shall notify the officers and members of their election, and shall keep a roll of the members, and shall issue notices of all meetings.

### III.

The Treasurer shall collect, and, under the direction of the Executive Committee, disburse all funds of the Association; he shall report annually, and oftener if required; he shall keep regular accounts, which shall be at all times open to inspection of the members of the Association. His accounts shall be audited by the Executive Committee. Before discharging any of the duties of his office, the incumbent shall execute a bond with good and sufficient surety, to be approved by the President, payable to the President and his successors in office, in the sum of five thousand dollars, for the use of the Association and condi-

tioned that he will well and faithfully perform the duties of his office so long as he discharges any of the duties thereof.

## IV.

The Executive Committee shall meet at least once a month, except in July, August and September. They shall have power to make such regulations, not inconsistent with the Constitution and By-Laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of their proceedings, which shall be read at the ensuing meeting of the Association; and it shall be their duty to present business for the Association. They shall have no power to make the Association liable for any debts amounting to more than half the amount in the Treasurer's hands in cash, and not subject to prior liabilities. They shall perform such other duties as are required of them by the Constitution, or as may be assigned to them by the President.

## V.

The Central Council shall perform all such duties as may be required of them by the Constitution or as are assigned to them by the President, but they shall not be required to keep a record of their proceedings, nor shall they make any report to any meeting of the Association, unless such report is required by the Association, and then only as to the particulars about which they are required to report; and the provisions of this section shall apply also to Local Councils.

## VI.

At each annual, stated or adjourned meeting of the Association the order of business shall be as follows:

1. Reading of minutes of preceding meeting.
2. Address of the President.
3. Report of the Treasurer.
4. Report of the Executive Committee.
5. Elections, if any, to membership.
6. Reports of Standing Committees.
7. Reports of Special Committees.
8. Election of Officers and Appointment of Committees.
9. Miscellaneous business.

This order of business may be changed by a vote of the majority of the members present.

The parliamentary rules and orders contained in Cushing's Manual, except as otherwise herein provided, shall govern all meetings of the Association.

#### VII.

If any person elected does not, within one month after notice of his election, signify his acceptance of membership by a letter to the Secretary to that effect, and by payment of his admission fee, he shall be deemed to have declined to become a member.

#### VIII.

In pursuance of Article IX of the Constitution, there shall be the following Standing Committees:

1.—A Committee on Jurisprudence and Law Reform, who shall be charged with the duty of attention to all proposed changes in the law, and of recommending such as in their opinion may be entitled to the favorable consideration of the Association.

2.—A Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the working of our judicial system, the collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending, from time to time, to the Association such action as they may deem expedient.

3.—A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what change it is expedient to propose in the system and mode of legal education, and of admission to the practice of the profession in the State of Alabama.

4.—A Committee on Publication, who shall be charged with the duty of examining and reporting, when so required by the Association, upon matters proposed to be published by its authority.

5.—A Committee on Grievances who shall be charged with the hearing of all complaints that may be made in matters affecting the interest of the legal profession and the practice of law, and the administration of justice, and to report the same to this Association, with such recommendations as they may deem advisable; and said committee shall, in behalf of the Association, institute and carry on such proceedings against offenders, and to such an extent as the Association may order, the cost of such proceeding to be paid by the Executive Committee out of moneys subject to be appropriated by them.

6.—A Committee on Correspondence, who shall be charged with the duty of corresponding with the officers and committees of other Bar Associations for the purpose of causing action relative to law questions of national importance.

7.—A Committee on Legislation, who shall be charged with the duty of ascertaining and reporting to each meeting of the Bar Association such legislation as it may approve of and consider necessary and proper to carry into effect the suggestions contained in the reports of the various committees, and papers read at any previous meeting. and it shall be the duty of said committee to prepare, at the expense of this Association, and cause to be printed and distributed by the Secretary to the members of the



Association, at least thirty days before each annual meeting, in the form of bills or resolutions, all of such measures as may be reported by it for their consideration, together with the report of the committee.

All reports submitted to the Association recommending changes in the statutory law, or amendments thereto, shall be accompanied by bills or joint resolutions in the form to be presented to the General Assembly for enactment.

8.—A Committee on Local Bar Associations, who shall be charged with the duty of encouraging the organization and maintenance of local Bar Associations throughout the State, and their affiliation with this Association.

9.—A special committee of three members, to be known as the Committee on Legislative Enactment, shall be appointed by the President at the meeting next before each session of the General Assembly, which shall be continued until the annual meeting after the next session of the General Assembly, and it shall be the duty of said committee to present to the General Assembly in form of a memorial, all such bills and joint resolutions, the enactment of which has been recommended by this Association. Before the meeting of the General Assembly, a copy thereof shall be sent by mail by the Secretary of this Association to each member of the General Assembly, at least thirty days before its meeting, and as soon as it is organized, the Secretary shall place a copy thereof on the desk of each member. Such memorial shall contain a copy of each bill and joint resolution, as approved by this Association, and the reasons for their adoption, as shown by this Association, and such additional argument as it may deem necessary. And it shall be the duty of the committee to take all such steps as they may deem proper to insure the enactment of such bills and joint resolutions. The expenses incurred by the committee shall be paid out of the funds of the Association. It shall be the duty

of this committee to report to the meeting of the Association next after the meeting of the General Assembly, and accompany their report with a copy of the memorial, which they shall have submitted to the General Assembly.

IX.

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of this Association, and shall continue in office until the annual meeting of the Association next after their appointment, and until their successors are appointed, with power to adopt rules for their own government not inconsistent with the Constitution or these By-Laws. Any standing committees of the Association may, by rule, provide that three successive absences from the meetings of the committee, unexcused, shall be deemed a resignation of the members so absent, of his place upon the committee. Any standing committee of the Association may, by rule, impose upon its members a fine for non-attendance and may provide for the disposition of the fines collected under such rule.

X.

Whenever any complaint shall be preferred against a member of the Association for misconduct in his relations to this Association, or in his profession, the member or members preferring such complaint shall present it to the Committee on Grievances in writing, and subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The committee shall, thereupon, examine the complaint, and if they are of opinion that the matters therein alleged are of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than five days of the time and place when the committee will meet for the consideration thereof, to be served on the member com-

plained of, either personally, or by leaving the same at his place of business during office hours, properly addressed to him. If after hearing his explanation the committee shall deem it proper that there should be a trial of the charge, they shall cause a similar notice of five days of the time and place of the trial to be served on the party complained of.

The committee shall be furnished with a list of the witnesses, their names and places of residence, who it is proposed shall be examined to sustain the charge which shall accompany the complaint when made to the committee; and when the day is set for trial the member complained of, upon his demand therefor, shall be entitled to a copy of said list of witnesses. At the time and place appointed for the trial, or at such other time as may be granted by the committee, the member complained of shall file a written answer or defense; and should he fail to do so, the committee may proceed thereupon to the consideration of the complaint.

The committee shall thereupon and at such other times and places as they may adjourn to, proceed to hear the evidence adduced and try the complaint, and shall determine all questions of evidence.

The complainant and the member complained of shall each be allowed to appear personally and by counsel who must be members of the Association; and the complainant and the member complained of shall each be competent witnesses. The witnesses shall vouch for the truth of their statements on their word of honor. The committee shall have power to summon witnesses, and if any of such witnesses are members of the Association, neglect or refusal to appear may be reported to the Association by the committee and treated as misconduct.

The committee, of whom at least four must be present at the trial, except that a less number may adjourn from time to time, shall hear and decide the allegations sub-

mitted to them; and if they find the complaint or any material part of it to be true, they shall so report to the Association, with their recommendation as to the action to be taken thereon.

The decision of the committee shall be served on the member complained of; and if the decision be that the complaint or any material part thereof is true, and in that case only, the committee shall also serve a copy of the complaint, answer, if there be an answer, and decision on the President of the Association; and if requested either by the member or members complaining, or the member complained of, shall annex thereto a copy of the evidence taken, which said document shall be regarded as a report of the committee to the Association.

Every such report shall be acted on only by the Association at an annual, stated or adjourned meeting of the Association and of which the member complained of shall have due notice, to be served upon him by direction of the committee. The Association shall thereupon proceed to take such action on said report as they may see fit, provided only that no member shall be expelled unless by the vote of two-thirds of the members present and voting.

Whenever any trial shall be determined on, the member complained of may object for cause to any of the members of said committee, which causes he shall state in writing and present to the committee, thereupon the committee shall report the facts to the President, and enclose to him a copy of the objections for cause; and the President shall forthwith summon the Central Council to meet with him and determine what weight, if any, the objections for cause are justly entitled to have, and if the President and a majority of the Central Council present and voting, shall determine that the objections for cause are not well taken, and that the same are overruled, the President shall so inform the Committee on Grievances, but if the President and a majority of the Central Council as aforesaid shall

determine that any of said objections for cause to any member of the Committee on Grievances are well taken, then the President shall so inform said committee, and forthwith appoint another member or members to supply the temporary vacancy caused thereby; and the method herein provided shall be resorted to until a committee is obtained against whom the member complained of urges no just objection for cause.

All the foregoing proceedings shall be kept secret, except as their publication is hereinbefore provided for, unless otherwise ordered by the Association.

#### DISBARMENTS.

That whenever the Central Council shall direct the prosecution for disbarment of an attorney, if in their judgment it shall be necessary or desirable that assistant counsel should be appointed to assist in the prosecution of said cause, they shall appoint a member of this Association, with instructions, to assist in such prosecution, and it shall be the duty of such member to comply with such order of the Central Council, and any member of this Association so appointed who shall, without good excuse, fail or refuse to assist in such prosecution, shall be expelled from the Association. And the Central Council shall report to the Association all such failures to prosecute, and in the event of failure of any attorney so appointed, the Central Council shall appoint some other member of this Association to act as such assistant prosecuting attorney.

#### XI.

Nomination of candidates to fill the respective offices may be made at the time of the election by any member, and as many candidates may be nominated for each office as members may wish to name, but all elections, whether to office or membership must be by ballot. A majority of

the votes cast shall be sufficient to elect to office; but five negative votes shall be sufficient to defeat an election to membership.

## XII.

All vacancies in any office or committee of this Association shall be filled by appointment of the President, and the persons thus appointed shall hold for the unexpired term of his predecessor; but if a vacancy occur in the office of President, it shall be filled by the Association at its first stated meeting occurring more than ten days after the happening of such vacancy and the person elected shall hold office for the unexpired term of his predecessor.

## XIII.

Every member of this Association shall pay his annual dues to the Treasurer on the first day of March in each year, and no person shall be qualified to exercise any right or privilege of membership who is in default in that respect for a period of sixty days after that time; *provided however*, that at any time before next meeting of the Association thereafter such person may be restored to membership by order of the Executive Committee, and upon his having then paid his annual dues to the Treasurer; and all persons who have ceased to be members of the Association by reason of failure to pay their annual dues will no longer be borne upon the roll as members thereof by the Secretary and treasurer.

## XIV.

These By-Laws may be amended at any stated, adjourned or annual meeting of the Association by a majority vote of those present.

## XV.

Any officer may resign at any time upon settling his accounts with the Association. A member may resign at

any time upon the payment of all dues to the Association; and from the rate of the receipt by the Secretary of a notice of resignation with an endorsement thereon by the Treasurer that all dues have been paid as above provided, the person giving such notice shall cease to be a member of the Association.

## XVI.

The offices of Secretary and Treasurer shall be filled by the Secretary, and his annual salary shall be five hundred dollars, one-half of which shall be due on the first day of May, and the other half on the first day of November in each year, but may be paid earlier or at any other time if Executive Committee shall, in writing, so direct, but this shall be in full of all compensation to him. No other officer of the Association shall receive any salary or compensation.

## XVII.

The Association shall have its annual meeting at such time and place as the Executive Committee may determine, and continue in session until all the business before it is disposed of. If the President and Central Council shall determine that it is necessary for said Association to hold any other meeting, during any year, the same shall be held at such time and place as the Central Council may fix, and upon twenty days notice of such time and place to be given by the Secretary, by publication in a public newspaper, and the Secretary shall give this notice upon the order of the President.

NEGROLOGY OF THE  
ALABAMA STATE BAR ASSOCIATION,  
1904-1905.

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BY THOMAS M. OWEN.

The Association has been blessed for the past year. Notwithstanding its membership has increased, the losses by death have been small. Only two members have been taken away: Messrs. Patrick C. Massie of Montgomery, and Robert L. Hipp of Cullman.

PATRICK CABELL MASSIE.\*

Mr. Massie combined the qualities of a lawyer and business man, and was a success both at the bar and in the business world. Of a timid nature, however, he shrank from the contests of the courts, and at his death, November 11, 1904, he had practically retired from the active practice. He came to Montgomery in November, 1883, and a month later he was admitted to the bar, with the prestige of an academic and legal education received at the far-famed University of Virginia, from which he had graduated with the degree of LL.B. in 1883. Practicing alone for some years, on October 1, 1886, he became associated in the practice with George M. Marks. Later he was associated with Wm. C. McGuire. In connection with the law, he took part

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\**History of the University of Virginia*, (1904), vol. ii, p. 191. *portrait*; Alexander Brown's *Cabells and their kin* (1895), p. 378; and *Memo-rial Record of Alabama*, vol. ii, p. 717.



in business affairs, and had several investments in Montgomery. He was also interested in fruit growing, and had an estate, "Redlands," Nelson county, Va., where he had extensive orchards of apple trees. At his death he was president of the Montgomery Abstract Company. In June 1891 he was elected recorder of the city of Montgomery, in which office he served two years. He was a communicant of St. John's Episcopal Church, and a member of the Knights of Pythias and of the Benevolent Protective Order of Elks.

Mr. Massie was born at Three Springs, near Massie's Mills, Nelson county, Va., August 27, 1862, and was the son of Patrick Cabell and Susan Catherine (*Withers*) Massie, the grandson of Dr. Thomas Massie, and great-grandson of Major Thomas Massie, a soldier in the Revolution. His paternal grand mother was a Cabell, a family distinguished in Virginia history. His parents survive him. On August 27, 1893 he was married to Elizabeth McCullough, daughter of Capt. Hugh and Jane (*Eddins*) Kirkman, formerly of Tuscaloosa, Ala. They have two children: Joel White and Jane Kirkman Massie. He is buried in Oakwood cemetery, Montgomery.

ROBERT LEE HIPP.\*

On April 11, 1905, in company with an officer who was attempting to serve some papers near, and the village of Joppa, Cullman county, Mr. Hipp was shot and instantly killed by John Williams, a farmer. The killing was altogether without provocation. The slayer escaped, but was captured and sentenced to die, the first death penalty in Cullman county.

Mr. Hipp was born in Brooksville, Blount county, Ala., February 13, 1873, and belonged to the younger generation of lawyers. He was educated in the common schools

\**Alabama Official and Statistical Register*, 1903, p. 38; and *Birmingham Age-Herald*, April 12 and 13, 1905.

of Blount county, and also at Blount College, from which he graduated with the degree of B. S. in 1892. Later he took a law course in Cumberland University, Lebanon, Tenn., from which he graduated with the degree of bachelor of laws in 1899. In 1900 he made the race for the State Senate from the 3rd district, composed of the counties of Blount, Cullman, and Winston, and was elected. In that body he made a good record, and during his second term served as chairman of the Committee on Education. He was for a time chairman of the County Democratic Executive Committee of Blount county. Admitted to the bar in 1900 he practiced continuously until his death. During the summer of 1904 he removed to Birmingham where he was for a short time the partner of Judge Zell Gaston, but he very soon returned to Cullman county. He was never married. His father was Lycurgus Hipp, a native of Ellijay, Ga., who early came to Alabama, and located at Brooksville, and his mother was Letta, daughter of Abram Hyatt, of Blount county.

## FORMER PRESIDENTS.

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**\*WALTER L. BRAGG,**  
January 20, 1879, to December 4, 1879.

**EDMUND W. PETTUS,**  
December 4, 1879, to December 2, 1880.

**\*JOHN LITTLE SMITH,**  
December 2, 1880, to December 30, 1881.

**\*EDWARD A. O'NEAL,**  
December 30, 1881, to November 29, 1882.

**\*M. L. STANSEL,**  
November 29, 1882, to August 2, 1883.

**\*HENRY C. SEMPLE,**  
August 2, 1883, to August 7, 1884.

**\*N. H. R. DAWSON,**  
August 7, 1884, to December 3, 1884.

**\*WILLIAM H. BARNES,**  
December 3, 1884, to December 3, 1885.

**\*WILLIAM M. BROOKS,**  
December 3, 1885, to December 2, 1886.

**\*HENRY C. TOMPKINS,**  
December 2, 1886, to December 15, 1887.

**\*WILBUR F. FOSTER,**  
December 15, 1887, to December 20, 1888.

**MILTON HUMES,**  
December 20, 1888, to August 1, 1889.

**\*THOMAS H. WATTS,**  
August 1, 1889, to August 7, 1890.

**HANNIS TAYLOR,**  
August 7, 1890, to July 9, 1891.

**\*Deceased.**

## ALABAMA STATE BAR ASSOCIATION

A. B. M'EACHIN,  
July 9, 1891, to July 7, 1892.

\*A. C. HARGROVE,  
July 7, 1892, to July 6, 1893.

J. R. DOWDELL,  
July 6, 1893, to July 11, 1894.

JAMES E. WEBB,  
July 11, 1894, to July 11, 1895.

\*DANIEL S. TROY,  
July 11, 1895, to September 25, 1895.

\*RICHARD C. JONES,  
First Vice-President, acted as President  
from the death of Col. Troy,  
September 25, 1895, to August 6, 1896.

RICHARD H. CLARKE,  
August 6, 1896, to July 1, 1897.

JOHN P. TILLMAN,  
July 1, 1897, to June 18, 1898.

\*JOHN D. ROQUEMORE,  
June 18, 1898, to June 17, 1899.

JOSEPH J. WILLETT,  
June 17, 1899, to June 16, 1900.

THOMAS G. JONES,  
June 16, 1900, to June 29, 1901.

EDWARD L. RUSSELL,  
June 29, 1901, to July 5, 1902.

LAWRENCE COOPER,  
July 5, 1902, to June 20, 1903.

EDWARD DEGRAFFENRIED,  
June 20, 1903, to July 9, 1904.

THOMAS R. ROULHAC,  
July 9, 1904, to July 1, 1905.

GEO. P. HARRISON,  
July 1, 1905.

\*Deceased.

## OFFICERS OF THE ASSOCIATION,

1905-1906.

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### PRESIDENT:

GEORGE P. HARRISON, Opelika.

### VICE-PRESIDENTS:

FREDERICK G. BROMBERG, Mobile,

EMMET O'NEAL, Florence.

SAMUEL D. WEAKLEY, Birmingham,

W. W. CALLAHAN, Decatur,

CHAS. P. JONES, Montgomery.

### SECRETARY AND TREASURER:

ALEXANDER TROY, Montgomery.

### EXECUTIVE COMMITTEE:

GEO. W. JONES, *Chairman*,

R. T. GOODWYN,

LEE H. WEIL,

J. L. HOLLOWAY,

ALEX. TROY, *Ex-officio*.

### CENTRAL COUNCIL:

JOHN LONDON, *Chairman*, Birmingham,

LEE C. BRADLEY, Birmingham,

EDWARD DEGRAFFENRIED, Greensboro,

E. K. CAMPBELL, Birmingham,

C. C. WHITSON, Talladega.

## COMMITTEES, 1905-1906.

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### ON JURISPRUDENCE AND LAW REFORM.

John M. Chilton, Chairman . . . . .Montgomery  
Daniel Coleman. . . . .Huntsville  
J. J. Willett.... .Anniston  
James Weatherly.....Birmingham  
E. H. Dryer.....Talladega

### ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

A. H. Alston, Chairman.....Clayton  
Charles W. Ferguson.....Birmingham  
Paul Speake.....Huntsville  
Daniel Partridge, Jr.....Selma  
Terry Richardson.....Montgomery

### ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

Shelby S. Pleasants, Chairman.....Huntsville  
M. Sollie ..... Ozark  
E. W. Faith..... Mobile  
H. C. Thach.... .Athens  
W. J. James.....Russellville

### ON CORRESPONDENCE.

Frederick G. Bromberg, Chairman..... Mobile  
Julius Sternfeldt.....Montgomery  
Claude Riley.....Elba  
W. R. Walker.....Athens  
Allen J. Roulhac.....Sheffield

### ON LEGISLATION.

J. J. Mayfield, Chairman.....Tuscaloosa  
R. F. Ligon.....Montgomery  
Ray Rushton.....Montgomery  
W. B. Oliver.. .Tuscaloosa  
S. L. Brewer .....Tuskegee

## ON PUBLICATION.

|                             |               |
|-----------------------------|---------------|
| L. M. Mosely, Chairman.. .. | Union Springs |
| C. S. McDowell, Jr.....     | Eufaula       |
| A. E. Barnett.....          | Opelika       |
| J. T. Ashcraft .. ..        | Florence      |
| Samuel L. Cox.....          | Carrollton    |

## ON GRIEVANCES.

|                                |            |
|--------------------------------|------------|
| George P. Jones, Chairman..... | Florence   |
| J. A. W. Smith .. ..           | Birmingham |
| Mac A. Smith.....              | Prattville |
| Thomas C. McClellan.....       | Athens     |
| Alex. M. Garber.....           | Talladega  |

## ON LOCAL BAR ASSOCIATIONS.

|                              |            |
|------------------------------|------------|
| W. T. Sanders, Chairman..... | Athens     |
| Z. M. P. Inge.....           | Mobile     |
| Fred S. Ball....             | Montgomery |
| Vasser L. Allen.....         | Birmingham |
| George P. Cooper. .          | Huntsville |

## ON LEGISLATIVE ENACTMENT.

|                                     |            |
|-------------------------------------|------------|
| Edward deGraffenried, Chairman..... | Greesboro  |
| J. M. Foster. ....                  | Tuscaloosa |
| Hugh Morrow.....                    | Birmingham |

## DELEGATES TO AMERICAN BAR ASSOCIATION.

|                                      |            |
|--------------------------------------|------------|
| Frederick G. Bromberg, Chairman..... | Mobile     |
| R. E. Steiner .. ..                  | Montgomery |
| Emmet O'Neal.. ..                    | Florence   |

## HONORARY MEMBERS.

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|                             |                            |
|-----------------------------|----------------------------|
| Hon. T. W. COLEMAN,         | Hon. H. T. TOULMIN,        |
| Hon. T. N. McCLELLAN,       | Hon. S. B. TONEY, Col.,    |
| Hon. JHO. F. DILLON, N. Y., | Hon. ALEX. C. KING, Ga.,   |
| Hon. J. R. DOWDELL,         | Hon. WM. J. CURTIS, N. Y., |
| Hon. H. A. SHARPE,          | Hon. J. R. TYSON,          |
| Hon. H. M. SOMERVILLE,      | Hon. D. D. SHELBY,         |
| Hon. R. W. WALKER,          | Hon. H. A. HERBERT, D. C., |
| Hon. J. M. FALKNER,         | Hon. E. M. SHEPARD, N. Y., |
| Hon. THOS. G. JONES         | Hon. N. D. DENSON,         |
| Hon. F. H. BUSBEE, N. C.,   | Hon. JNO. C. ANDERSON,     |
| Hon. JON. HARALSON,         | Hon. R. T. SIMPSON,        |
| Hon. JNO. W. JUDD, Tenn.    |                            |

## MEMBERS, 1905-1906.

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|                       |            |
|-----------------------|------------|
| Allen, Vassar L.....  | Birmingham |
| Alston, A. H. . . . . | Clayton    |
| Ashcraft, J. T. ....  | Florence   |
| Austill, H. ....      | Mobile     |
| Avant, C. A. ....     | Birmingham |

|                         |            |
|-------------------------|------------|
| Ball, F. S. ....        | Montgomery |
| Ballard, Eugene. ....   | Prattville |
| Barnett, A. E. ....     | Opelika    |
| Bestor, D. P. ....      | Mobile     |
| Bestor, D. P., Jr. .... | Mobile     |
| Birch, Alex. C. ....    | Birmingham |
| Blakey, Wm. M. ....     | Montgomery |



Boykin, W. J. .... Gadsden  
 Bradley, Lee C. .... Birmingham  
 Brandon, W. W. .... Tuscaloosa  
 Brewer, S. L. .... Tuskegee  
 Brickell, R. C. .... Huntsville  
 Bricken, C. R. .... Luverne  
 Bromberg, F. G. .... Mobile  
 Brown, Armstead. .... LaFayette  
 Brown, Charles G. .... Birmingham

Caffey, F. G. .... New York, N. Y  
 Callahan, W. W. .... Decatur  
 Caldwell, John M. .... Birmingham  
 Campbell, E. K. .... Birmingham  
 Chambers, W. L. .... Washington, D. C  
 Chapman, W. R. .... Geneva  
 Chilton, John M. .... Montgomery  
 Clarke, R. H. .... Mobile  
 Coleman, Daniel. .... Huntsville  
 Coleman, Phares. .... Montgomery  
 Cooper, Geo. P. .... Huntsville  
 Cooper, Lawrence. .... Huntsville  
 Cox, Samuel L. .... Carrollton  
 Crenshaw, C. E. .... Montgomery  
 Crowe, W. A. .... Sheffield  
 Crum, Benjamin P. .... Montgomery

Davison, J. M. .... Brewton  
 Davidson, J. W. .... Birmingham  
 deGraffenried, E. .... Greensboro  
 Dent, S. H., Jr. .... Montgomery  
 Dill, Henry B. .... Birmingham  
 Dryer, E. H. .... Talladega

Elmore, John A. .... Montgomery  
 Evans, A. A. .... Clayton  
 Evans, G. A. .... Birmingham  
 Evins, R. B. .... Greensboro  
 Eyster, John C. .... Decatur

Faith, E. W. .... Mobile  
 Ferguson, C. W. .... Birmingham  
 Fitts, Henry. .... Tuscaloosa

Fitts, W. C ..... Mobile  
 Fitzpatrick, Alva ..... Montgomery  
 Foster, E. H ..... Huntsville  
 Foster, J. M. .... Tuscaloosa  
 Francis, W. R ..... Decatur

Garber, Alex. M ..... Talladega  
 Gipson, H. E. .... Prattville  
 Goodwyn, R. T. .... Montgomery  
 Gray, James W. .... Mobile  
 Grubb, W. I. .... Birmingham  
 Gunter, W. A. .... Montgomery  
 Gunter, Gaston. .... Montgomery

Harmon, R. L. .... Montgomery  
 Harwood, Bernard ..... Eutaw  
 Harris, C. C. .... Decatur  
 Harrison, Geo. P. .... Opelika  
 Hausman, D. S. .... Montgomery  
 Heflin, J. Thomas ..... LaFayette  
 Hinton, Isaac R. .... Carrollton  
 Holloway, J. L. .... Montgomery  
 Hundley, O. R. .... Huntsville  
 Humes, Milton. .... Huntsville

Inge, Z. M. P. .... Mobile

James, W. J. .... Russellville  
 Jeffries, Louis E. .... Selma  
 John, S. W. .... Birmingham  
 Jones, Charles P. .... Montgomery  
 Jones, George W. .... Montgomery  
 Jones, George P. .... Florence

King, J. C. .... Birmingham  
 Kirk, J. T. .... Tusculmbia  
 Kirkland, W. W. .... Ozark  
 Knox, John B. .... Anniston

Lane, L. M. .... Greenville  
 Latady, A. .... Birmingham  
 LeGrand, M. P. .... Montgomery  
 Letcher, J. T. .... Montgomery

## MEMBERS.

275.

Ligon, R. F. .... Montgomery  
 London, A. T. .... Birmingham  
 London, John. .... Birmingham  
 Lowe, R. J. .... Birmingham  
 Lull, Frank W. .... Wetumpka

Maner, O. C. .... Montgomery  
 Martin, W. L. .... Montgomery  
 Marks, George M. .... Montgomery  
 Marx, Lee J. .... Birmingham  
 Mayfield, J. J. .... Tuscaloosa  
 McClellan, Thomas C. .... Athens  
 McCord, L. C. .... Guntersville  
 McDaniel, P. A. .... Abbeville  
 McDowell, C. S., Jr. .... Eufaula  
 McIntyre, C. P. .... Montgomery  
 Mackenzie, Stuart. .... Montgomery  
 McKinley, John. .... Eutaw  
 McMorris, B. K. .... Wetumpka  
 Mallory, H. S. D. .... Selma  
 Morrow, Hugh. .... Birmingham  
 Moseley, L. M. .... Union Springs  
 Mullins, Tipton. .... Clanton  
 Mulky, W. O. .... Geneva  
 Murphy, J., Jr. .... Huntsville

Nathan, J. H. .... Sheffield

O'Neal, Emmet. .... Florence  
 Oliver, W. B. .... Tuscaloosa  
 Owen, Thomas M. .... Montgomery

Parker, George H. .... Cullman  
 Partridge, Daniel, Jr. .... Selma  
 Peach, George W. .... Clayton  
 Pearson, R. H. .... Birmingham  
 Pearson, W. W. .... Montgomery  
 Pettus, E. W. .... Selma  
 Pettus, E. W., Jr. .... Selma  
 Pitts, P. H. .... Selma  
 Pleasant, Shelby S. .... Huntsville  
 Purifoy, F. M. .... Furman

|                              |                   |
|------------------------------|-------------------|
| Reese, W. S. . . . .         | Montgomery        |
| Richardson, J. C. . . . .    | Greenville        |
| Richardson, Terry . . . . .  | Montgomery        |
| Riley, Claude . . . . .      | Elba              |
| Roulhac, Allen J. . . . .    | Sheffield         |
| Roulhac, Thomas R. . . . .   | Sheffield         |
| Rushton, Ray . . . . .       | Montgomery        |
| Russell, E. L. . . . .       | Mobile            |
|                              |                   |
| Sanders, J. F. . . . .       | Elba              |
| Sanders, W. T. . . . .       | Athens            |
| Sayre, A. D. . . . .         | Montgomery        |
| Sayre, T. Scott . . . . .    | Montgomery        |
| Screws, W. W. . . . .        | Montgomery        |
| Seibels, W. T. . . . .       | Montgomery        |
| Smith, A. G. . . . .         | Birmingham        |
| Smith, Mac. A. . . . .       | Prattville        |
| Smith, J. A. W. . . . .      | Birmingham        |
| Smith, John V. . . . .       | Montgomery        |
| Smythe, R. B. . . . .        | Greenville        |
| Sollie, M. . . . .           | Ozark             |
| Sowell, Thomas L. . . . .    | Jasper            |
| Speake, Paul . . . . .       | Huntsville        |
| Steiner, R. E. . . . .       | Montgomery        |
| Stern, P. H. . . . .         | Montgomery        |
| Sternfeld, Julius . . . . .  | Montgomery        |
| Stewart, A. W. . . . .       | Marion            |
| Stringfellow, H. . . . .     | Montgomery        |
|                              |                   |
| Tayloe, W. H. . . . .        | Uniontown         |
| Taylor, Hannis . . . . .     | Washington, D. C. |
| Thach, H. C. . . . .         | Athens            |
| Thorington, W. S. . . . .    | Tuscaloosa        |
| Thomas, J. R. . . . .        | Prattville        |
| Thomas, W. H. . . . .        | Montgomery        |
| Tillman, John P. . . . .     | Birmingham        |
| Timmerman, C. E. O. . . . .  | Prattville        |
| Tomlinson, John W. . . . .   | Birmingham        |
| Trotter, James . . . . .     | Bessemer          |
| Troy, Alexander . . . . .    | Montgomery        |
|                              |                   |
| Van de Graaff, A. S. . . . . | Tuscaloosa        |
| Verner, C. B. . . . .        | Tuscaloosa        |

## MEMBERS.

277.

|                        |              |
|------------------------|--------------|
| Walker, W. R.....      | Athens       |
| Weakley, S. D.....     | Birmingham   |
| Weatherly, James ..... | Birmingham   |
| Weil, Leon.....        | Montgomery   |
| Weil, Lee H.....       | Montgomery   |
| Wiley, A. A.....       | Montgomery   |
| Wilson, Massey.....    | Montgomery   |
| White, F. S .....      | Birmingham   |
| White, H. K.....       | Birmingham   |
| Whitson, C. C.....     | Talladega    |
| Willetts, J. J.....    | Anniston     |
| Williams, Travis.....  | Russellville |
| Wood, S. A.....        | Birmingham   |

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**Proceedings**  
of the  
**Twenty-ninth Annual Meeting**  
of the  
**Alabama State Bar**  
**Association**



**Anniston, Alabama**  
**July 6 and 7,**  
**1906**



**Proceedings**  
of the  
**Twenty-ninth Annual Meeting**  
of the  
**ALABAMA STATE BAR**  
**ASSOCIATION**

Held at  
**Anniston, Alabama,**  
**July 6 and 7,**  
**1906**

---

**MONTGOMERY, ALA.,**  
**PARAGON PRESS,**  
**1906**



# PROCEEDINGS

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Anniston, Ala., July 6th, 1906.

The Twenty-ninth Annual Meeting of the Alabama State Bar Association was called to order by the President, Gen. George P. Harrison, in the Circuit Court Room of Calhoun County, Anniston, Ala., at 10 o'clock a. m., on Friday, July 6th, 1906.

The President: The Mayor of the City of Anniston, desires to say a few words.

Hon. Thos. H. Kilby: Mr. President, and gentlemen of the Association: It would be ridiculous for me, a layman, to attempt to entertain an assembly of distinguished lawyers with a speech. In my boyhood days I cherished the hope that some day I might be a lawyer, but that dream was shattered. If it had been realized, today no doubt I would be a briefless lawyer, and perhaps not so brief a speaker. I apologize for this personal allusion, and extend to you on behalf of the City of Anniston a cordial welcome. Anniston feels highly honored in having you select her for the meeting place this year after Montgomery has had it so often and I believe successfully. We are proud to have you with us; we assure you a most hearty welcome every moment of your stay here. Stay just as long as you please, and I assure you that the welcome will outlast the stay.

Mr. Blackwell: Mr. President and gentlemen of the State Bar Association: On behalf of the Bar Association of Calhoun County, I beg to extend to you a most hearty welcome. As has been said by our Mayor, we feel particularly honored to have you meet with us, and we trust that your stay will be pleasant and profitable.

The President: Mr. Mayor, and Mr. Blackwell: In

behalf of the Alabama State Bar Association, I beg to accept this kind and cordial welcome from your city, and to accept it with all the fulness with which you have extended it.

Mr. John London: Mr. President: As Chairman of the Central Council, I would like to propose some gentlemen for admission to the Association.

The President: It will be in order. The Chairman of the Central Council desires to submit a report.

Mr. John London: Mr. President: The Central Council nominates the following applicants for membership:

W. W. Whiteside, Anniston; W. M. Adams, Clanton; R. E. Taylor, Roanoke; William E. Fort, Birmingham; W. M. Lackey, Dadeville; B. B. Bridges, Dadeville; G. W. L. Smith, Brewton; A. H. Merrill, Eufaula; Hinds Peevey, Birmingham; Rutherford Lapsley, Anniston; Norvell A. Lapsley, Anniston; W. W. Patton, Livingston; Harry Upson Sims, Birmingham; A. L. McLeod, Selma; Erle Pettus, Athens; H. P. Merritt, Tuskegee; Felix L. Smith, Rockford; S. L. Field, Montgomery; W. C. Tunsall, Jr., Anniston; D. C. Blackwell, Anniston; W. P. Acker, Anniston; Joel F. Webb, Birmingham; A. R. Brindley, Gadsden; S. J. Bowie, Anniston; C. D. Kline, Anniston; A. H. Carmichael, Tuscumbia; J. F. Matthews, Anniston; George A. Sorrell, Alexander City; Henry McDaniel, Demopolis; John Pelham, Anniston; W. B. Harrison, Talladega.

I move, sir, that the Secretary of this Association be instructed to cast the vote of the Association for these applicants.

The President: If there is no objection the motion will be to instruct the Secretary to cast the ballot for the gentlemen named. The chair hears no objection.

Motion adopted.

The Secretary: Mr. President: I have cast the ballot



of the Association for the gentlemen nominated.

The President: The gentlemen are elected, and if present they will be welcome.

The Secretary: Mr. President: Before proceeding with the regular order of business, I desire to say that I have a letter from Judge Harmon, our orator on this occasion, stating that he would leave Cincinnati on Thursday and would reach Anniston Friday forenoon. I am advised that the train will arrive here at 11:32. I move the appointment of a committee of five to meet Judge Harmon at the train and conduct him to the hotel.

Motion adopted.

The President: In compliance with the motion I will appoint on that committee Messrs. Clarke, Blackwell, London, Willett and Alston.

The President: The next order of business is reading the address by the President, which I will now read.

(Appendix.)

Mr. Willett: Will the Association please excuse the committee appointed to meet Judge Harmon at the train?

The President: We hate to part with you, but you will be excused, gentlemen.

The President: The next business in order, will be the Report of Central Council.

The Secretary: Mr. London is Chairman of the Council. He is with the committee to meet Judge Harmon and I suggest that the report be passed.

The President: The next business in order, will be the report of the Treasurer.

The Treasurer then read his report, as follows:

#### TREASURER'S REPORT.

Montgomery, Ala., July 2, 1906.

Mr. President and gentlemen of the Association:

The Treasurer submits the following report of the finances of the Association for the year ending July 1st, 1906:

### RECEIPTS.

|                                                  |                   |
|--------------------------------------------------|-------------------|
| To balance on hand at meeting June 30, 1905..... | \$401 80          |
| To cash received from annual dues.....           | 960 00            |
| To cash proceeds sale of proceedings .....       | 3 00              |
| Total .....                                      | <u>\$ 1364 80</u> |

### DISBURSEMENTS.

|          |         |                                                                                                                   |         |
|----------|---------|-------------------------------------------------------------------------------------------------------------------|---------|
| 1905.    |         |                                                                                                                   |         |
| July 1.  | By Cash | Expenses at meeting ....                                                                                          | \$ 4 00 |
| " 5.     | " "     | Dinner to members at Jackson's Lake .....                                                                         | 231 10  |
| " 8      | " "     | Postage .....                                                                                                     | 2 00    |
| " 10.    | " "     | Woodruff Company—Stationery .....                                                                                 | 5 75    |
| " 11.    | " "     | Pat. McGaully, Stenographer .....                                                                                 | 27 50   |
| Aug. 23. | " "     | Expenses Secretary to Narragansett Pier to meeting American Bar Association under resolution of Association ..... | 135 00  |
| Oct. 16. | " "     | Stamps .....                                                                                                      | 3 85    |
| Nov. 1.  | " "     | Woodruff Co., stationery for President .....                                                                      | 1 25    |
| " 21.    | " "     | Woodruff Co., 500 copies proceedings 28th annual meeting .....                                                    | 252 65  |
| " 21.    | " "     | Postage on proceedings ..                                                                                         | 26 50   |
| Dec. 9.  | " "     | Stamps .....                                                                                                      | 2 00    |
| 1906.    |         |                                                                                                                   |         |
| Jan. 23. | " "     | Stamps .....                                                                                                      | 2 00    |
| Feb. 19. | " "     | Postage on notice of dues .....                                                                                   | 4 00    |
| " 22.    | " "     | Stamps ....                                                                                                       | 1 50    |
| " 27.    | " "     | Expenses to Birmingham to attend meeting Central Council .....                                                    | 3 00    |
| Mch. 5.  | " "     | Expenses to Birmingham                                                                                            |         |

# MINUTES TWENTY-NINTH ANNUAL MEETING 7

|                             |    |                                                                                                        |                     |
|-----------------------------|----|--------------------------------------------------------------------------------------------------------|---------------------|
|                             |    | to attend meeting Central Council .....                                                                | 3 50                |
| Mch. 13.                    | By | Cash Stamps.....                                                                                       | 1 00                |
| " 29.                       | "  | " Drayage on proceedings State Bar Association, sent to Secretary and presented to State Library ..... | 25                  |
| April 17.                   | "  | " Stamps .....                                                                                         | 1 00                |
| " 24.                       | "  | " First National Bank, collecting drafts .....                                                         | 7 40                |
| May 12.                     | "  | " Stamps .....                                                                                         | 1 00                |
| " 12.                       | "  | " Copying bills heretofore reported to Association for Committee on Legislation..                      | 8 55                |
| June 16.                    | "  | " Woodruff Co., programs, 29th, annual meeting, envelopes, etc .....                                   | 6 75                |
| " 16.                       | "  | " Postage on programs distributed .....                                                                | 5 00                |
| July 2.                     | "  | " Secretary's salary to July 1st, 1906 .....                                                           | 500 00              |
|                             |    |                                                                                                        | <hr/>               |
|                             |    |                                                                                                        | \$1236 55—\$1236 55 |
|                             |    |                                                                                                        | <hr/>               |
| The balance on hand is..... |    |                                                                                                        | \$ 128 25           |
|                             |    |                                                                                                        | ALEXANDER TROY,     |
|                             |    |                                                                                                        | Treasurer.          |

Audited and approved July 3rd, 1906.

LEE H. WEIL,  
J. LEE HOLLOWAY,  
Sub-Committee of Executive Committee.

On motion the report was received and filed.

The President: The next order of business is the Report of the Executive Committee.

The Secretary: I very much regret to say that the Chairman of the Committee, Mr. George W. Jones, was called to Kentucky by the illness of his mother, and for fear that he would not be able to attend this meeting, he asked me to submit the report for him. I am pleased, however, to say that I am just in receipt of a telegram

from Mr. Jones, which informs me that he has returned to Montgomery. As this is the proper place for the report to be read, I will submit it.

#### REPORT OF THE EXECUTIVE COMMITTEE, ALABAMA STATE BAR ASSOCIATION.

The Executive Committee submits the following report:

Monthly meetings of the committee have been held since the last annual meeting of the Association, as required by the By-Laws, and proper attention has been given to all matters coming before the committee, as will be shown by reference to the minutes of the several meetings which have been kept in accordance with the requirements of the By-Laws.

The dates for the twenty-ninth annual meeting of the Association were fixed by the committee for Friday and Saturday, July 6-7, 1906, and in response to a cordial invitation from the Calhoun County Bar Association, the place of meeting was fixed at Anniston.

It is a great pleasure for the committee to report that it was successful in its efforts to induce the Honorable Judson Harmon, formerly Attorney General of the United States, to accept its invitation to deliver the annual address, and the committee desires to most heartily congratulate the Association upon Judge Harmon's acceptance of the invitation.

In addition to the address by Judge Harmon, a number of distinguished members of the Alabama Bar have favorably responded to the invitations of the committee to read papers on the occasion of the annual meeting, as will be shown by reference to the program distributed by the Secretary.

Since the last annual meeting of the Association, the Executive Committee, through Hon. Alexander Troy, its Secretary, has presented to the Supreme Court of Alabama, the volumes of reports of the proceedings of the different State Bar Associations, which had been sent to the Association from year to year. These volumes were gratefully accepted by the supreme court and placed in the Supreme Court Library, where they are accessible to the members of the bar throughout the State. Beyond any question, these volumes will constitute a most valuable acquisition to the library, containing, as they do, the best thoughts of the best lawyers in the several States.

Since the annual meeting last year, one honorary member and

four active members of the Association, have died, viz:

Hon. Thos. N. McClellan, Chief Justice of the Supreme Court of Alabama.

Hon. Henry R. Dill, of Birmingham.

Hon. Jas. W. Gray, of Mobile.

Hon. W. W. Kirkland, of Ozark.

Hon. Daniel Coleman, of Huntsville.

This committee recommends the appointment of a committee of this Association, of which Hon. Thomas M. Owen, Director of the Department of Archives and History, shall be chairman, to prepare appropriate memorial sketches of these deceased members for publication in the proceedings.

By a resolution adopted at the last annual meeting, the chairman of this committee was requested to secure, if possible, reduced passenger rates on the occasion of the annual meeting this year. The chairman is pleased to report that he took the matter up as requested, and that the several railroads with their accustomed liberality and public spirit, cheerfully responded to the request for extremely low round trip rates.

A sub-committee of this committee, composed of Lee H. Weil, Esq., and J. L. Holloway, Esq., was appointed by the chairman to examine the accounts of the Treasurer, and make a report thereon. This committee performed its duty and filed its report showing that the accounts of the Treasurer were correct, and commended that officer upon the neat condition in which the books were kept.

Your committee desires to extend to the Association its congratulations upon the excellent work which has been accomplished by the Association, and upon its present prosperous and growing condition.

Respectfully submitted,

GEO. W. JONES, Chairman,

R. T. GOODWIN,

J. L. HOLLOWAY,

LEE H. WEIL,

ALEX. TROY, Ex Officio,

Executive Committee.

On motion the report was adopted.

The President: The next order of business is the report of the Committee on Jurisprudence and Law Reform by the Chairman, Hon. Jno. M. Chilton.

The Secretary: Judge Chilton has sent his report to

the next member of the Committee, Mr. Willett who is absent with the committee to meet Judge Harmon, and I move that the report be passed.

The motion was adopted.

The President: The next order of business is a paper by Hon. Daniel Partridge, Jr., on "The Rationale of Interference by Injunction with Criminal Prosecutions under Void Municipal Ordinances."

The Secretary: I have that paper, sent to me by Judge Partridge, and will request Mr. Jeffries, of Selma, to read it to the Association.

Mr. Jeffries: I move that we dispense with the reading it, and that it be filed and printed in the proceedings.

Mr. Nathan: I think that it ought to be read.

Mr. Jeffries then read the paper to the Association.

(Appendix.)

Mr. Jeffries: Mr. President: I think it is usual on the first day of our meetings for a motion to be made to have a committee appointed for the selection of officers for the succeeding year, and as that is customary, I now move that a committee consisting of the usual number be appointed by the President to name or select officers, to be submitted to this Association on tomorrow.

Mr. Roulhac: Mr. President: Five is the usual number on that committee.

The motion was adopted.

The President: The chair will name the members of that committee during the day.

Mr. Knox: Mr. President: Before you take up any other matter of business, I would like to state to the members of the Bar Association who are attending this meeting, that we have two social clubs in this city, and the privileges of these clubs will be extended to mem-

bers of the Bar in attendance. They will not need cards, but we want them to feel that they will be at home and welcome at the Calhoun Club, which is at the corner of Noble and Eleventh Streets, and the Elks Club, which is at the corner of Tenth and Wilmer Streets.

The President: Gentlemen: You have heard the kind invitation, of which you will take due notice.

On account of the temporary absence of Mr. Henry Fitts, I will call for the paper by Francis G. Caffey, Esq., on "Chief Justice George W. Stone"—a sketch.

Mr. Caffey: Mr. President and gentlemen of the Association: I want to say to you what a great pleasure it is to me to be here today. I am still a member of the Association, though I have not had opportunity to attend its meetings for the past four years.

The paper on Judge Stone which I am about to read, was written at the instance of Prof. William Draper Lewis, Dean of the Law School of the University of Pennsylvania. It is to be one of a series of short biographies of deceased American judges and lawyers, which he is editing, to be published in book form by the John C. Winston Co. of Philadelphia, and it is by the courtesy of the editor and the publishers that I am permitted to use it today; but I regret to say that, as the book has not yet been published, I am not permitted to insert the paper in the proceedings of the Association.

Mr. Caffey then read his paper.

The President: The next order of business is report of the Committee on Legal Education and Admission to the Bar by the Chairman, Shelby S. Pleasants, Esq.

The Secretary: Mr. President: I have a letter from Mr. Pleasants expressing his regret at his inability to be present. He has sent me his report, which I will now read.

(Appendix.)

On motion the report was received and filed.

Mr. Clarke: Mr. President: The committee appointed to receive Judge Harmon beg to report that they have discharged their duties, and have safely ensconced him in the Alabama Hotel.

The President: We thank you.

Mr. Roulhac: The chair passed the reading of a paper by Mr. Henry Fitts, who was absent at that time, but is now present.

The President: The Association will be pleased to hear Mr. Fitts read his paper on "Trial Courts in Alabama."

Mr. Fitts then read his paper.

(Appendix.)

The President: The chair will now appoint as the committee to nominate officers: Messrs. L. E. Jeffries, T. R. Roulhac, Lawrence Cooper, S. L. Brewer, F. L. Blackmon.

The President: Gentlemen of the Association: I am requested to extend an invitation to the members of the Association, to an informal reception this evening at our good Brother Knox's residence in this city, immediately after the address by our orator, Judge Harmon.

The Secretary: It appears on the program that the address of Judge Harmon will take place this evening, but I move that it be made a special order for some hour, say 8 o'clock, instead of immediately after dinner, so that he may know, and the members of the Association know that the address will not be immediately after recess.

The motion was adopted.

The Association, on motion of Mr. Cooper, adjourned until 4 p. m.



AFTERNOON SESSION.

The Association met pursuant to adjournment.

The President: Gentlemen of the Association: On account of the absence of certain gentlemen, several reports were passed at the morning session.

The Secretary: Judge Alston was absent at the time the report of the Committee on Judicial Administration and Remedial Procedure was called for. He is now present, and will present his report.

Judge Alston then read his report.

(Appendix.)

On motion the report was received and adopted.

Mr. Willett: Mr. President: I notice on the program that "Each essay and report read before the Association will be open for discussion for one hour, speeches discussing it being limited to ten minutes." I will not take the ten minutes, but I heard with interest Judge Alston's report, and it is a subject which has no doubt appealed to the mind of every practitioner in this State. Our Legislature is about to convene after four years, as under our new Constitution we have quadrennial sessions, and if we have anything in the way of remedial legislation it will have to be done at the coming session of the Legislature. There is one point to which I wish to call attention, in the event they draft any bill on remedial procedure—and that is the anomalous condition in which bills of exceptions are in this State today. Some of us sometimes have a case away from home, and take for instance the members of the Anniston bar; we sometimes go to Talladega, sometimes go to Gadsden, sometimes go to Birmingham and try cases, and sometimes, though not often, we lose cases, and the question comes up on bills of exceptions. Nearly every one of the city courts have

different rules as to bills of exceptions. One has a rule that the bill of exceptions must be presented within 30 days, another within 20 days, another that it may be extended by the court, and some by the judge,—and where are we? We have to have intimate knowledge of every one of the acts creating these different city courts.

There ought to be some general law in Alabama applicable to all bills of exceptions so any practitioner can practice in any court in Alabama without charging himself with the knowledge of all the technical rules, applicable to the different acts; because you know, and every member of the bar knows, you rarely get your bill of exceptions ready within the first extension; you ask another extension, and are then met by a ruling of the supreme court that the judge of the city court of Gadsden is not authorized to extend the time in vacation—or in the city court of Birmingham, that the judge cannot extend the time more than once, or that in some other court, the judge and not the court must extend the time. Now the bill of exceptions is often the most important part of the case.

There should be some general statutory provision applicable to all bills of exceptions to all the courts in the State, not only to the circuit courts, but to the city courts or the State, and I hope our Committee on Judicial Administration and Remedial Procedure in the bill, they will present to the Legislature will have something on this line, whereby the practitioner at the bar can practice in these separate courts, and not have their bills stricken from the record in the supreme court simply because they are not entirely familiar with the several acts creating these different city courts.

Mr. Hundley: Mr. President: I would like to ask my friend, how would he provide, if we had a general law, against a particular local court, local enactment for the benefit of that court. I understand that is the attitude

now. We have a general law with reference to signing bills of exceptions and extending the time. That general law applies to the courts in our circuit, but how are we to get a law on the statute books which will prevent a local representative from introducing a local bill changing the practice as to that particular court, especially when the lawyers who practice in that court go before the Legislature and ask for it?

Mr. Willett: Mr. President: My idea is a general rule applicable to all the courts—the judge to have authority to extend the time for signing bills of exceptions during vacation, whether a city or a circuit judge, that the court can extend the time for signing the bill of exceptions during term time more than once, and that it shall be expressly stipulated in the law that it shall be applicable to all city as well as circuit courts. I do not see why such a law should not be passed. The Legislature can say this law is applicable to city as well as circuit courts.

Mr. Hundley: I agree with you, but after you get the law, what is to prevent the local courts from changing it?

Mr. Willett: I do not claim that we can, but the city courts of Gadsden, Anniston, Birmingham and Montgomery, are already in existence, and it is not likely that those acts will be repealed. These general provisions should be made applicable to all the city and circuit courts, then, of course, if members of the Legislature from a particular county want to repeal the law and give due notice, there is nothing to prevent it, but I apprehend that such would not be done, and certainly not if the lawyers of the county knew of it, for they would not agree to it, because we all practice away from home sometimes, and know the difficulty we have in each court with different provisions with reference to the extension of bills of exceptions and with reference to signing bills of exceptions. There should be a general law applicable

to the whole State with reference to bills of exceptions, and I think, if the law is once passed, no effort would be made to repeal it.

Mr. John London: Mr. President: In line with that, I suggest that the Committee on Remedial Procedure be requested to draft a bill providing that bills of exceptions may be signed at any time within the time for appeal, provided the judge agrees. I do not see why the parties to a litigation should not agree as to the time for signing bills of exceptions, as long as they choose. Of course it makes it difficult for the judge to sign the bill of exceptions, but so long as counsel on both sides are willing to have the time extended, I do not see why they should not extend it to the full limit of time for the appeal. I move that this Association is in favor of the passage of an act conferring the right upon the courts and the parties to extend the time for bills of exceptions within the time that an appeal can be taken.

Mr. Willett: And that it be applicable to the city courts, as well as circuit courts.

Mr. John London: Of course.

The President: You have heard the motion, which has been seconded, and the question is upon the adoption of the motion.

Mr. Blackwell: I have a suggestion, which is, that if a law is passed as suggested by Mr. Willett and Mr. London, that I think it very doubtful whether the Legislature could pass a local law, because it is a matter that can be and would be provided by a general law of the State, and the Constitution would not permit the changing of that by local laws. One of the things that the Constitution says is that any question that may be provided for by a general law, there must be no local legislation on it, and I make the suggestion for that reason. Certainly if there is a general law passed providing for all bills of excep-

tions, there would be no objection to it, and I think it would be a good way to provide for it.

Mr. Henry Fitts: Mr. London's motion embodies, as I understand it, a law by which bills of exceptions could be signed within the time for appeal provided the opposing counsel and the judge agree thereto; that means all three to agree?

Mr. John London: I did not mean that. My idea was that counsel could agree to give the whole time.

Mr. Roulhac: I understand the question is upon the acceptance and adoption of the report.

The President: The chair will state that the report of the committee has been adopted, and it is rather out of order that I entertained the discussion. Mr. Willett had a right at any time to discuss it before the report of the committee was adopted and ordered to be filed.

Mr. Roulhac: I suppose a motion would now be in order to the effect that the report of that committee just passed on, be referred to the Committee on Legislation, with instructions to prepare a bill as recommended in that report, and embrace not only this question but some others, and I now make the motion if the chair will entertain it.

The President: Does the gentleman offer that as a substitute for the motion of Mr. London? If not a substitute, it would hardly be in order. The chair has entertained the motion, though irregularly. The discussion was not opened until after the report of the committee had been adopted.

Mr. London: To straighten the parliamentary tangle on that proposition, I now move we reconsider the motion by which it was adopted.

The President: The question is upon reconsideration of the vote,—is the Association ready for the question? As many as favor reconsideration will say aye and those opposed no. The ayes have it and the adoption of the

report is reconsidered; and the motion will recur upon the motion of Mr. London, unless he withdraws it in favor of the motion offered by Judge Roulhac?

Mr. John London: His motion was hardly as broad as mine,—I shall have to renew my motion.

Mr. Roulhac: I agree with you, but at the same time, I think the Committee on Legislation could, with the report before it, consider bills on the jury law, questions of pleading as well as questions of bills of exceptions. Ever since this Association was organized, several of these bills have been discussed before it and action sought by it, and I think the time has arrived when a concerted action on the part of this Association would bring about most cases coming before trial courts in the State. I think the jury law should be subject to careful consideration, and the matter of bills of exceptions is also worthy of consideration, but there are a number of other subjects that could be considered by the Committee on Legislation, and do more important work for the State than anything that the Association has yet done. I hope that this report will be referred to that committee, with instructions that they prepare bills for enactment by the next Legislature, after being submitted to this Association.

The President: The chair is of the opinion that the motion of Judge Roulhac is not really a substitute, and is not in order. The Association has a right to entertain the motion of Mr. London.

Mr. Hundley: I desire to offer an amendment to Mr. London's motion, which will be germane and in order, if I understand that the motion is to prepare a bill that bills of exceptions may be signed in the time allowed for appeals, by consent of counsel in writing, or by the order of the judge, if counsel cannot agree. I desire to offer an amendment to that—and such bill of exceptions shall not

be stricken after joinder in error. My motive for making that is this: the supreme court of Alabama in many decisions, one of which by the late Chief Justice Brickell, has held that a joinder in error waives all matters except such as are jurisdictional, which decision has never been overruled, and our supreme court frequently, when neither side to the record has made any motion to strike the bill of exceptions, and frequently when counsel on either side have not even discovered that there is anything wrong with the time of signing the bill of exceptions, but *ex mero motu*, has rendered decisions striking the bill of exceptions, leaving nothing in the case except the mere matters of record, which come up and the case is lost, when neither counsel on either side has anticipated, or even seen any defect in the time or manner of signing the bill of exceptions. So I offer the amendment—"and such bill of exceptions shall not be stricken after joinder in error."

Mr. John London: I suggest "after joinder in error, except upon motion by counsel."

Mr. Hundley: I am perfectly willing for that. That gets at the same thing, so as to give a chance to get the question up.

The President: The question is upon the motion of Mr. London, as amended by Mr. Hundley.

Mr. Henry Fitts: I see what Mr. Hundley means, but he has not fixed his amendment so it will accomplish anything, for this reason: For the last twenty years very few lawyers for the appellee join in error; as by doing so they waive some of their rights, and they submit almost universally without any joinder in error. If you change the amendment so as to read, "after the cause is noted as submitted by the court," you will accomplish the object.

Mr. Hundley: Except on motion of the appellee.

Mr. Henry Fitts: That will probably reach it.

Mr. Nathan: I do not see any objection to the suggestion made in the original resolution, nor in the amendment, except in one phase of it, and I would like to call the attention of the members of the bar to that phase. The resolution, as I understand it, proposes to permit a bill of exceptions to be signed at any time within the time wherein an appeal would lie, either by the order of the court, or by the consent of the attorneys. Now that means that for twelve months the attorneys could agree to submit a bill of exceptions to the trial judge.

Now I take it that every trial judge would be seriously concerned in giving a fair bill of exceptions, and in some instances where the business is very extensive that might be a very unwise duty to put upon the court, upon his own memory, or upon the memory of the litigants, to determine what the exceptions rested in, after twelve months. In the little experience I have had, I know that I have had difficulty in determining the evidence after sixty days where there was a difference of opinion or a contention on the part of counsel. Now the statute as now framed was intended, as I understand it, to protect the court as well as the parties, from doing something that was wrong, from making a statement in the bill of exceptions that did not speak the truth, and by extending the time for one whole year, you are multiplying the difficulty you are trying to obviate. I believe you ought to go so far as to say that they should have the right to sign the bill of exceptions within the time that an appeal would lie.

I think a limitation of six months would be sufficient. The statute now provides that it shall not be beyond the next term of court.

Mr. Henry Fitts: That is a general statute.

Mr. Nathan: It seems to me that six months time ought to be sufficient in any case to prepare and tender the bill of exceptions; a year is too long. I think in cur-



ing one evil you are creating a worse, and I suggest to the mover of the motion that to include the city courts as well as the circuit courts, that he make the limitation for the bill of exceptions six months, even though counsel should agree to pass it beyond that time. I think in justice to the trial judge six months should be as far as you should carry it.

The President: Does the gentleman offer an amendment to that effect?

Mr. Nathan: Probably Mr. London would accept that.

Mr. John London: I am not willing to accept that.

Mr. Jeffries: I think Judge Nathan's point is well taken, and I believe every attorney feels the force of it. Here is a case tried today. We have, say, twelve months to perfect the appeal. You can appeal on the record in twelve months. It stays in that situation for some length of time. You go to the trial judge; the appellant wants to appeal, the trial judge says to him, "I will give you nine months or eleven months to sign your bill of exceptions." Why the man who has won his case is absolutely at his mercy. There is no lawyer on earth, the way we take our testimony, without any stenographer at all, without any court stenographer in Alabama, except in Mobile, that can remember anything about the evidence, and there is not a judge in the State that can tell but very little about the evidence after sixty days, and certainly not after nine or eleven months. So it puts all absolutely at the mercy of the appellant, both the judge and the man who has won his case. I do not think it would do.

Now let us look at the other side of it. Take the city court that you are familiar with, that you practice at, and you know that we have thirty days to perfect an appeal in many different kinds of cases. We must perfect our appeal within that time—doubtless that is so in other courts. If you were to pass a general law

of this kind making it applicable to all city courts, then you would absolutely wipe out all right after that time. You have only thirty days to appeal your case, you cannot extend your bill of exceptions except for thirty days. That, however, could doubtless be remedied, but the fruits of a man's victory should not be taken away from him, as would be if given eleven months, or say eleven months and twenty-nine days to appeal in.

Under our system, in the ordinary way evidence is taken down, there is no lawyer sitting here that can tell anything about that evidence after six months, and no judge knows anything about it, practically speaking, after that time. I would suggest that there ought to be some limitation as to the time that the bill of exceptions ought to be signed.

I agree with Mr. Willett, that where the parties agree, on a reasonable time there should be some limit to it. Such agreement should show, or the judge should set the time, and then the bill of exceptions would be good, but there should be some limitation.

Mr. Willett: Just one word in reply to Mr. Jeffries. His argument would have a great deal of force but for the fact that there is a rule of the supreme court practice which provides that the transcript in the case must be filed in the court by or before the fourth day of the call of that division.

Mr. Jeffries: Unless you bring a certificate up that it cannot be prepared or the time been extended, and that carries it over.

Mr. Willett: There is a rule of practice which provides that if transcripts are not filed within the first three days of the call of the division, you can have the case affirmed on certificate. Upon reflection, I rather think myself that twelve months is too long, and that it would result, in a great many instances, in the defendant in a suit where there is a money judgment, get-

ting an extension of time, and then go down to the supreme court with a certificate of appeal and docket the case and continue it, and practically keep the case from submission in the supreme court for ten, eleven or twelve months. That I think would be an injustice to the plaintiff in the suit. I think it would meet the ends of justice if it be limited to six months.

But what I am planning to correct more than anything else, is the motley condition of the law with reference to all these different city courts. I agree with Judge Nathan, and I agree with Mr. Jeffries, that in view of the possibility of docketing the case and getting continuance at the call of the division as an excuse for not filing the transcript (the defendant having the money judgment against him frequently resorts to that thing) that six months is long enough. I cannot conceive of a case wherein the bill of exceptions could not be prepared within six months after the trial, therefore I shall support the amendment of Judge Nathan and advocated by Mr. Jeffries, that it be limited to six months.

Mr. John London: I am under a misapprehension. If I understand the gentleman, the resolution he offered was that the time might be extended by the consent of the parties, or the order of the judge. Now they are arguing as if the appellant had the whole matter in his hands, that he need not tender it, or have it signed within eleven or twelve months. He cannot do this unless the attorney on the other side agrees.

Mr. Jeffries: Suppose the judge agrees?

Mr. John London: Then I think it ought to be extended. The ordinary practice with us in Birmingham is to have the bill of exceptions signed within thirty days. I have known cases where the judge was sick, or where the counsel had to leave the city, or for various reasons, and it became imperative that the time for signing the

bill of exceptions should be extended. I see no reason where the counsel on both sides, appellant and appellee, both agree that the time should be extended, why it should not be extended.

Mr. Troy: It seems to me that the gentlemen have engaged in a discussion of something not before the Association.

There is a by-law of the Association which requires every report, suggesting changes in the statute law, to be accompanied by bills carrying them into effect. That is for the purpose of having the bills discussed by the Association and if approved, referred to the Committee on Legislative Enactment, to be appointed just prior to the convening of the Legislature to urge their passage. Now the discussion here seems to have proceeded on the idea that a bill had been drawn and is now before the Association for approval or disapproval.

I think that it would be better to request the Chairman of this Committee to draft bills carrying the suggestions made in the report into effect and present them to the Committee on Legislation, to be appointed by the incoming President, with instructions that they be sent to the codifier or introduced in the next Legislature for passage.

Mr. Roulhac: Mr. Troy has outlined more distinctly than I did, perhaps, what I intended to say, and I therefore move, as a substitute for Mr. London's motion, that the report of this committee now before the Association be referred to the committee for the preparation of bills, on all the subjects to which it relates, to be placed in the hands of the Committee on Legislation, which is appointed by the incoming President, and that committee can then consider all the different classes of matters that may be brought before it, and if the committee finds that a bill on that subject would receive the concurrence of the bar of the State and should be enacted into law that

it will present it to the Legislature and look after it as has been done for many years past.

There are several subjects, a whole lot of other subjects, embraced in that report which ought to be embraced in the laws of Alabama, and I therefore move, as a substitute, that that report be returned to the committee with instructions to prepare bills on all subjects to which it refers and hand them to the Committee on Legislation of this Association.

The President: What relation has that to the motion of Mr. London?

Mr. Roulhac: I move it as a substitute.

Mr. John London: I do not think that it is a substitute.

The President: The trouble is that a motion was allowed to be made without objection and entertained for the expression of opinion of the Association, even before the vote adopting the report of the committee was reconsidered. I am of the opinion that if a point of order had been made it would have been well taken, though I would like to see the By-Laws.

Mr. Troy: It is a part of By-Law No. 8 and provides that all reports suggesting changes in the statutory law shall be accompanied by bills carrying the suggestions into effect. This is for the purpose of giving the members of the Association an opportunity of discussing and passing on the bills.

Mr. Hundley: That is if the report suggested a law, but it did not. We are discussing the report under the rule which permits discussion, and in that discussion Mr. London makes a suggestion to instruct a committee of this Association. I admit the point if this report was an outline of a law to be enacted, but that is not the case here.

The President: Mr. Roulhac did not make his motion broad enough, and the motion of Mr. London is be-

fore the Association. Under the present understanding of the chair, it appears that his motion is in order.

Mr. Nathan: Before Judge Roulhac offers his motion, as I apprehend he will do, I wish to get the sense of the members of the bar present upon the original proposition made by Mr. London as contradistinct from the suggestion that I made in my remarks, and that is: That it is the sense of this meeting that bills of exceptions should be signed by the trial judges at any time, under his motion, within twelve months, by the consent of the attorneys or by the consent of the trial judge. I wish to move that it is the sense of this body that bills of exceptions should be signed by the trial judge, where the parties have agreed in writing or where the court has extended the time, but not longer than six months from the time of the expiration of the term of court. I offer that as a modification.

Mr. Willett: That would not do for this reason, some of our courts commence in January and continue until the last Saturday in July.

Mr. Nathan: From the date of trial and rendition of judgment.

Mr. John London: That cuts out the thirty and sixty days for the motion for a new trial.

Mr. Nathan: In meantime your bill of exceptions would have to be signed. You might be three years on that proposition. I think there should be a law day for the bill of exceptions, like anything else.

The President: Does Judge Roulhac insist upon his motion to refer this to a committee?

Mr. Raulhac: It seems to me that is a part of the motion.

The President: Do you include in that the whole matter, resolution by Mr. London and all?

Mr. Roulhac: Yes, sir.

The President: The question is to refer this resolu-

tion and the resolution offered by Mr. London to the Committee on Legislation.

Mr. John London: I wish to amend that: That it is the sense of this meeting that the resolution be reported by the committee. I wish to get the sense of this meeting. I would like to know whether we are to be muddled up by bills of exceptions. I do not want the court signing any bill of exceptions. I want the judge and the attorneys to do it. I do not want the court to have anything to do with making the orders.

The President: The motion by Mr. London is to amend the resolution with instructions as indicated by him. The question is upon the instructions.

Mr. Hundley: If you refer this to the committee, this Association will not meet until twelve months from today, this committee will not report until twelve months from today, and the Legislature meets on the second Tuesday of January, 1907; the result is that it puts it out of the way. I prefer Mr. London's motion, and I am perfectly willing for Judge Nathan's motion, amending it, but I want this Association to express itself upon that proposition, and to express itself now, so that it may be effective at the next session of the Legislature of Alabama, if any good results can be obtained.

Mr. John London: I withdraw my amendment.

Mr. Roulhac: The gentleman seems to have lost sight of the fact that the motion first presented was that it be referred to that committee with instructions to prepare bills for legislation, the bills recommended by the committee, which embraced the subject that these gentlemen have been discussing, and the others referred to in the report.

The President: The gentleman withdraws his amendment, and the question recurs upon the motion of Judge Roulhac to refer to the Committee on Legislation. Is the Association ready for the question?

Mr. Henry Fitts: I understand the motion is that the report of the committee be referred to the Committee on Legislation to prepare bills in conformity with that report?

Mr. Roulhac: Yes, sir.

Mr. Henry Fitts: The result of that is to carry the determination of all the very important questions involved in that report away from this Association, and to carry all the discretion as to whether those recommendations are good or ill, to the exclusive determination of that committee. Not to use discourteous language, Judge Roulhac's motion, as I gather the proposition, takes from us the due consideration, and all opportunity to act upon this question of bills of exceptions. In due course, we should have the opportunity to consider some other of the recommendations of that report; it has some important suggestions in regard to the jury system upon which members of this Association may have adverse views and upon which they should have an opportunity to act. It occurs to me that it matters not what the rule or the Association is in regard to a report going in about bills drawn, that such a rule can have absolutely no application. If brought up one at a time, we pass upon them, but as the matter comes here, the only way that this Association can voice its wisdom and express its wisdom, is by resolutions of the nature of that offered by Mr. London. It occurs to me, unless we want to surrender all of our rights to act upon legislation to a small committee, and vacate the objects for which we are gathered together, that the motion of Judge Roulhac should be defeated.

Mr. Roulhac: This could not be a motion to operate as a gag, because Mr. Hundley called attention to the fact that before the Association met again the Legislature would meet. Of course if you are going to go before the next Legislature some action should be taken. The bills



are not before the Association, but the subjects referred to in that report are brought to its attention, and I think a bill should be prepared by the Committee on Legislation on every subject referred to by that committee. I think there are three—one, the jury system, another, the question of bills of exceptions, and the other pleading. As Mr. Hundley called our attention a while ago, it is utterly impossible to consider those bills by the Association because they are not presented, but are we to lose the opportunity for four years to get legislation on subjects which should be legislated on now? Mr. London's resolution says there should be legislation. The whole object of my motion was that the Committee on Legislation should receive instructions from this Association to prepare a bill on each of these subjects.

Mr. Henry Fitts: I want to understand you. Isn't that exactly what Mr. London is trying to do? Isn't he trying to carry instructions to this committee to prepare a certain bill, and are you not advocating that very thing?

Mr. Roulhac: No, sir, extending it further. I am fully in accord with his motion, and I want to carry it to all the subjects mentioned in that report.

Mr. John London: What I want to ask you. Does this motion of yours carry the affirmance or disaffirmance of this Association as to my proposition?

Mr. Roulhac: So far as I am concerned I would be most in accord with it, if you put that in.

Mr. John London: I want to get the affirmative action of the Association upon the proposition.

Mr. Roulhac: To prepare a bill to the end that you have just mentioned, I see no objection to that whatever, on the contrary, I am fully in accord with your motion, but I think it should go further and have legislation upon all the subjects.

Mr. Hundley: I want to understand the parliamentary situation, and if I do not, I want to be corrected. Mr.

London made a motion the purpose and result of which would be, to get the sense of this Association upon legislation in reference to the matters of bills of exceptions. Judge Roulhac; after first attempting an amendment to that motion, which was withdrawn, moves to refer Mr. London's motion to the Committee on Legislation along with this report. What is the result of that? It refers it to the committee without this Association taking action upon it one way or the other. What I am in favor of is, so far as the matters Judge Roulhac refers to, want to be heard from—let us settle this one question now, it matters not with me whether it be twelve or six months, let us have the affirmative action of this Association now before the Legislature meets next January, as to what this Association wants upon this matter, and the only way you can do that is by adopting the resolution of Mr. London, and not by adopting the motion of Judge Roulhac to refer it, because you refer it without getting the sense of this meeting.

The President: The question is upon the adoption of the motion of Judge Roulhac to refer the whole matter.

Mr. John London: My purpose was to get the matter up, and I withdrew my amendment.

The President: The question is upon the motion to refer to the Committee on Legislation.

Mr. Hundley: Before we act upon it?

Mr. Nathan: If I understand it now, the resolution is, that Mr. London's amendment of twelve months is included in the resolution, as a part of it.

The President: Motion to refer to the Committee on Legislation both reports of the committee just read, and the motion made by Mr. London, without recommendation or without expression of opinion at all. Are you ready for the question? As many as favor the motion to

refer will signify by saying aye, those opposed by saying no.

Division called for.

The President: As many as favor the motion to refer will please rise and stand until the vote is counted.

It appears the ayes have it, and the question is referred to the Committee on Legislation.

Mr. Hundley: I move now, in order that that may be effective, that the Committee on Legislation be requested to report at the first meeting on tomorrow, in order that we may be able to get it before the next Legislature. There is absolutely nothing to be accomplished if referred to this committee and goes over. The committee will not report until twelve months from this time, and I move that the committee to which it has been referred be instructed to report thereon at the first meeting of the Association on tomorrow.

Motion seconded.

The President: The question is on the adoption of the motion by Mr. Hundley that the committee to which this matter was referred be instructed to report at the next session of this Association on tomorrow.

The Secretary: The Committee on Legislation is composed of J. J. Mayfield, Chairman; R. F. Ligon, Ray Rushton, W. B. Oliver and S. L. Brewer,—only one of whom is present. I therefore move that the motion of Mr. Hundley be laid upon the table.

Motion seconded.

The President: And the question is to table the motion of Mr. Hundley. As many as favor the motion to table will say aye, and those opposed say no. The motion to table is adopted.

Mr. Hundley: I rise to a point of order.

The President: The gentleman will state the point of order.

Mr. Hundley: As there is but one member of the

committee present, it is plain there is no other committee of this body to which this matter may be referred, and I therefore move that the President at once fill the committee in order that the committee be in an attitude to act upon the matters referred to it.

Motion seconded.

Mr. Hundley: I rise to another point of order. I never heard of a parliamentary body whose presiding officer did not have the power to fill vacancies in committees when there are vacancies, and the reason assigned for laying my motion upon the table was because the committee did not have but one member present. The presiding officer has the power to fill that committee, and I move that it be filled in order to take into consideration such matters as may be referred to it.

Mr. Henry Fitts: I second the motion.

Mr. Lackey: It seems to me that it would be out of order for the President to appoint members of a committee until there is a vacancy on the committee. It is true that the members of the committee are not here, but it is a standing committee, and it seems to me that it would be beyond the power of the President to fill vacancies that do not exist. Therefore I make the point of order that the President has no authority, nor the Association any authority, to fill vacancies in that committee until vacancies are shown to exist.

The President: I am looking at the By-Laws, and ask for a little time.

Mr. Hundley: I believe that the President has the inherent authority, but I do not want to take up time. I just suggest that, I do not wish to raise the question of filling the committee, because there are other important matters before us.

The President: On examining the By-Laws, I will read for Mr. Hundley's information. (Reads By-Laws having reference to vacancies.) Now is there a vacancy?

I submit to Mr. Hundley that I think the Association ought not to do what is wrong. The Association can do as it pleases about appointing a special committee and refer this matter to it. It is impracticable for the standing committee to act when the members are not here. The President doubts that there is a vacancy.

Mr. Brewer: I am informed that there will be a report from the chairman of the standing committee.

The President: The next business before the Association is the report of the Committee on Legislation by the Chairman, Hon. J. J. Mayfield.

Mr. Henry Fitts: The Chairman of that Committee, Mr. Mayfield, told me before I left home that he would send his report to me by today's mail, and it should have arrived. I apprehend from the fact that it has not been received, that it will not be forthcoming at this session of the Association. It seems to me that we are in a deplorable condition from a parliamentary standpoint if this Association cannot in any way put itself upon record as in favor of needed legislation. I therefore move: That it is the sense of this Association that the next Legislature should adopt a law providing that bills of exceptions may be signed within six months from the final judgment in the cause, or the final determination of a motion for a new trial; Provided the judge trying the cause enters an order or orders to that effect, or provided in the absence of such order, opposing counsel agree to such extension, and; Provided, further, that no bill of exceptions shall be disregarded by the supreme court unless a motion to effect such disregard shall be entered by counsel for the appellee, and that the Committee on Legislation be instructed to draft a bill embodying these propositions and present it to the next Legislature for passage.

Motion seconded.

The President: Does Mr. Hundley withdraw his motion?

Mr. Hundley: Yes, sir.

The President: Mr. Hundley's motion being withdrawn, the question now recurs on motion of Mr. Fitts which is in order.

Motion adopted.

The President: The next order of business is report of the Committee on Correspondence by the Chairman, Hon. F. G. Bromberg.

Mr. Sternfeld: Mr. President and gentlemen of the Alabama Bar Association: For the first time in nearly twenty-five years, the Chairman of the Committee on Correspondence, Hon. F. G. Bromberg, of Mobile, is unable to be present today. Mr. Bromberg has for a long number of years been an earnest and constant worker, both as a member of this Association and also as chairman of this committee. He has made the report of this committee in person ever since the organization of that committee, if my information is correct, and there are some things in this report that he has zealously advocated for some time. He has given the subjects embraced in the report much time and study, and has kept in touch with the progress of events on the question of Uniformity of Laws. The report itself has been submitted to each member of the committee and is unanimous. As the next member on that committee, I am requested by Mr. Bromberg to read the report to the Association:

It will be noted in this report that mention is made by Mr. Bromberg of the valuable assistance rendered him by Hon. W. O. Hart, of Louisiana. These subjects, it is hardly necessary to state, are important. They have challenged the attention of a majority of the States of the Union. The suggestions made by Mr. Bromberg are of inestimable value to all our people. They are timely and in line with the progressive thought in this direc-

tion. We have with us today, a gentleman, Hon. W. O. Hart, of New Orleans, late member of the Constitutional Convention of Louisiana. Mr. Hart has given this subject close study and attention. He has been very active in bringing about suitable legislation in this direction on the part of many States on the Union. I would suggest, therefore, that before taking action on this report the Association hear from Mr. Hart, and, with the permission of this Association, I take pleasure in introducing to you Mr. President and members of the Alabama Bar Association the distinguished gentleman from Louisiana, Hon. W. O. Hart.

The President: Hon. W. O. Hart, a member of the New Orleans bar, who has taken a great deal of interest in this question of Uniform Divorce is present with us, and it has been suggested that he address the Association.

Mr. Hart: Mr. President and gentlemen of the Alabama Bar Association: It is a great privilege that one who is a stranger to practically all of you should be allowed to appear before you, even to discuss subjects of national importance, and I assure you that I esteem the privilege very highly.

Uniformity of legislation is very dear to my heart, and I embrace every opportunity that presents itself to aid in the furtherance of that laudable object; and in my intercourse with lawyers throughout the country I have endeavored to have their States represented in the National Conference of Commissioners on Uniform State Laws.

While in Washington last October I succeeded in interesting members of the bar of the District of Columbia in the matter, and delegates have been appointed to represent the District at the next Conference; and by correspondence with lawyers in other States that have not

heretofore been represented, I hope to see delegates appointed.

I took up the matter of the representation of Alabama with my friend and comrade, Mr. Thomas M. Owen, and through him with Mr. F. G. Bromberg; and it is at his invitation, followed by that of the officers of your Association, that I am here today.

In passing, I may say that while a stranger to most of you, I am by no means a stranger to Alabama. I spent five years of my life at Gainesville, not a very important place; and in fact one of your delegates told me this morning he never heard of it. For his information I will say that it is in Sumter County, and on the Tombigbee river.

It is a fact that Alabama, through this Association, was the first State to suggest the preparation and adoption by the States of a Uniform Negotiable Instruments Law. But Alabama should not be satisfied with the honor; but should consider the words of Pope:

"Honor and shame from no condition rise.  
Act well your part. There all the honor lies."

Therefore, Alabama should not be satisfied with the honor of originating this law, but should speedily adopt it. In our State it required six years work to pass the bill, and I believe it would have been much longer had not in the meantime our State appointed Commissioners on Uniform State Laws, who took the matter up, and fortunately one of them was elected to the Legislature, and thus gave the subject his personal attention.

Bar Associations can do little in the way of uniformity of legislation. A smaller body can accomplish much more. The smaller, the better. You no doubt remember the words of Daniel Webster: "The best committee is one of three members, with two sick in bed."



The Negotiable Instruments Law has been passed in twenty-nine States, in one territory, and by act of Congress for the District of Columbia. It is under consideration in other States and in Congress for Indian Territory, Alaska and the insular possessions.

I hope that at the next session of your Legislature the law will be passed, and I earnestly ask you to see that it is passed exactly as recommended by the Conference, because any change in the law at once destroys the uniformity. Kentucky thought it could improve upon the law and made certain changes; but I hope no other State will follow that course. The law will be found in the statutes of many States, including of course Louisiana, and everywhere has been copied from the New York law, which I think was the first State to adopt it.

In these days of commercial activity, it seems to me there can be no question as to the advisability of uniformity in the laws of every-day life, and certainly so in the matter of negotiable instruments. How much better is it that a lawyer can advise his clients as to his rights regarding a piece of negotiable paper which is made by a citizen of one State in another State and payable in a third. National uniformity through Congress is out of the question. We have too much legislation from that source now. We must secure this uniformity through the action of each individual State.

At the last meeting of the Commissioner on Uniform State Laws, a constitution was adopted under which Governors of States, without legislative act, may appoint commissions which would be recognized by the Conference, and I trust that this State will not await the adoption of the law recommended in the report of the committee, which has just been read, but that you will call upon your Governor to make immediate appointment, so that your State may be represented at the next Conference in St. Paul in August. Several States have ap-

pointed without legislative act, and Alabama may well do the same. The Conference will be held in St. Paul commencing August 25th, just before the meeting of the American Bar Association, and I sincerely hope that it will be my pleasure to welcome commissioners from this State on that occasion. Thirty-one States, two territories and the District of Columbia have already appointed commissioners, and the matter is under consideration in a number of other States.

I hope, too, that you will see that commissioners are appointed who can attend,—or at least one of them. A number of the States who have appointed commissioners have never been represented in the Conference, and this is a condition of affairs to be deplored. I can well understand that where three are appointed it is not always possible for all to attend. But certainly one ought to be able to come.

The Conference at St. Paul will discuss uniform law on Sales of Personal Property, Warehouse Receipts, Bills of Lading and Partnership. The main discussion will probably be in reference to the Law on Uniform Warehouse Receipts, a subject, of course, of great importance in Alabama with its large agricultural resources; and I am sure the views of the commissioners from your State would be of great benefit to the Conference. The law was discussed at the last Conference, but there was so much diversity of opinion that no final result was reached.

Of course, you know of the divorce congress which was called by the Governor of Pennsylvania, and which met in Washington in February last. Another session will be held probably in October. Delegates from Alabama were accredited to the congress; but as they were all members of the United States Congress, their official duties prevented them from attending the divorce congress. I hope your State will have delegates at the next Con-

ference who can attend and confer with the delegates from the other States.

We all know the crying evils of divorce and divorce procedure as the law exists and is in force in many States today. The greatest evil, of course, is what is known as the migratory divorce, a subject so well considered by the Supreme Court of the United States in the recent case of *Haddock vs. Haddock*. While that decision caused some consternation, it is in accord with reason and common sense. Recently I had occasion to talk the matter over with Mr. Justice White, who rendered the opinion; and his final analysis thereof is that the point decided was: that one of the spouses cannot leave the established matrimonial domicile and go into another State for the purpose of obtaining a divorce from the spouse who remained at the matrimonial domicile. The *Haddock* case not only does not decide that a divorce cannot be obtained against an absentee, but approves the Kentucky case of *Atherton vs. Atherton*, which held that where one of the spouses unlawfully leaves the other and the matrimonial domicile, the spouse who remains at the matrimonial domicile, and has just cause therefor, may obtain a divorce in a proceeding which follows the law of that matrimonial domicile. In effect, therefore, the *Haddock* case decides only that one spouse cannot acquire a domicile away from the other, which was never the matrimonial domicile, simply for the purpose of obtaining a divorce. That has been the law of Louisiana for many years; and in our State the courts can never acquire jurisdiction over a divorce proceeding where the parties come to the State for that purpose.

Of course, the reduction of the divorce evil and reform of divorce procedure will require years for its accomplishment, but I believe the recent divorce congress is a right beginning.

Now, gentlemen, I again thank you for being enabled

to appear before you; and whether or not your State is represented at the Conference of Commissioners on Uniform State Laws, I shall feel that my appearance here has not been useless. I have listened with great interest to your proceedings and discussions, and I have learned more of the practice of the common law today than I have heretofore learned in all my reading, study and practice for nearly thirty years. I must congratulate the members of your Association upon the character of the papers read.

I invite you one and all to attend the convention of the Commercial Law League, which will meet at Asheville, North Carolina, on July 30th. If you come there, we will show you how to hold a convention. I regret to find that the ladies take no part in your meetings. The Commercial Law League makes a specialty of the social feature, and when we gather at our annual conventions we are like one big family.

The President: The question before the Association is the report of the committee. What disposition will be made of it?

Mr. Whitson: The substance of this report is, that the Committee on Legislation be instructed to draft and endeavor to have enacted by the next Legislature, a uniform negotiable instruments law. The next recommendation is that, that committee be instructed to endeavor to have passed at the next session of the Legislature a bill providing for the appointment of commissioners who shall examine into the question of uniformity of laws, of the forty-odd States of the Union, in the way of marriage and divorce, and other subjects. The bill does not provide that a salary shall be attached, but that the expenses shall be paid by the State.

As has been well stated by Mr. Hart the Governor could appoint those who could act in conjunction with others who will interest themselves

in the matter of such legislation. The objection I have to the report is, that we are going to ask at the hands of the next Legislature some very important legislation, and which is of more importance to the bar and the people of the State of Alabama than a negotiable instrument law or the appointment of such commissioners. I have no objection to a law such as suggested here, for the appointment of commissioners, who are interested and willing to devote their time to endeavor to get uniform legislation on the subject of divorce throughout the United States. There are very few, I apprehend, who have the time to do missionary work in other States of the Union without compensation, and this bill provides for only actual expenses. But the vital and important questions that we want to ask at the hands of the next Legislature is a jury law that will improve the juries that we have now—I shall not enter into a discussion of this subject in a body of lawyers.

The next thing that we want to ask at the hands of the Legislature of Alabama is to pay the judiciary of Alabama a decent salary. If this Association goes before the Legislature, and not only asks for these vital and important matters that are pressing now—filled as that Legislature will be with the various propositions in regard to railroad legislation—if we go asking too much, we will get nothing; but if we concentrate our efforts to get vital legislation, we may obtain it. I don't know about the judge's salary, but there is some hope of it. I believe we can obtain legislation such as suggested in regard to a new jury law, and on the question of bills of exceptions, and other suggestions made in the report of the Committee on Legislation. I am not sufficiently familiar with the uniform negotiable instruments law to discuss it intelligently. It has been some time since I read it.

It is true, as stated by Mr. Hart, it has been

adopted in a number of States, but the decisions in those States have been different and varied, and we don't know what the decision of our supreme court will be upon it. We have statutes declaring what constitute negotiable instruments which have existed in the State for many years. The law simple and well understood not only by the profession, but by the people and business men. How long it would take to educate the people of Alabama to accept that which had its origin in Indiana I don't undertake to say; but I do know that the Legislature of Alabama has repeatedly refused to enact the uniform negotiable instruments law, after being carefully considered by different legislative bodies; and in all human probability it will be rejected again. I have not the missionary spirit, when I am interested in home matters, nor do I care what is happening in Indiana and other States.

I want to obtain intelligent juries and fair judges that is one of the primary things we need. I also want to procure for the judiciary in Alabama fair and adequate compensation, and every lawyer in Alabama wants to do it. Is it wise to depart from a system we have had for a number of years, that the courts have construed, and to adopt that we know not of, isn't it better to hold that we have, than to fly to things we know not of? I do not know how the supreme court of Alabama would construe the uniform negotiable instruments law. Mr. President, for my part—speaking for myself—I see no objection to the present negotiable instruments law of the State of Alabama. If people in New York have business in Alabama in reference to commercial paper, they can readily inform themselves as to what the law is in Alabama, and every commercial lawyer knows, practically, what governs in the different States, and they could take legal advice in Alabama. I see no

special benefit in enacting a uniform negotiable instruments law.

I have no objection to the bill for the appointment of commissioners, those gentlemen who want to devote their time to that object. I will move to strike from the resolution on the report of the Committee on Correspondence recommending or instructing the Committee on Legislation to draft a bill in favor of uniform negotiable instruments law. I really think we would weaken our position in regard to other legislation.

Mr. Willett: I think Mr. Whitson has taken rather a false view of the objects of this Association. The prime object of this Association organized twenty-seven years ago by Gen. Pettus, Gov. Watts and others, as stated in their charter, the objects of the Association, they said were to elevate the profession, to encourage a spirit of brotherly love, to advance the science of jurisprudence and to bring about uniformity of legislation. This Association, as an Association, cannot take the position that it does not desire uniformity of legislation in the United States. It was organized for the express purpose and one of the very first Bar Associations in the United States that was organized. It was organized the year of, or year after the American Bar Association, the manifest purpose of which is to bring about uniform legislation. If we do not exist for that purpose, we do not exist at all—we meet and have a barbecue or a good time, but we certainly have a deeper, broader object. We may all agree about the increase of the judge's salary individually, we may be in favor of it, but we have a higher and broader object than that.

If you will read the Act of 1878-79 you will see that the prime object is to bring about uniformity of legislation, and advance the science of jurisprudence and we cannot afford to take the stand that we do not want uniformity of legislation in the United

States. I therefore move to lay Mr. Whitson's motion on the table.

The motion to table was adopted.

The question then recurred upon adoption of the report of the committee, which was adopted.

The President: The next order of business is report of Committee on Legislation by the Chairman, Hon. J. J. Mayfield.

The Secretary: Mr. President: I have a letter from Judge Mayfield in which he states that he would send the report by Mr. Fitts. Mr. Fitts stated a while ago that as yet he had not received it. I suggest that it be passed until tomorrow.

The President: That will be the order unless objected to.

The next order of business is a paper by Ephriam H. Foster, Esq., on "Inference vs. Evidence."

The Secretary: I have a letter from Mr. Foster stating that for certain good cause, he had been unable to prepare the paper.

The President: That completes the business for today. The address of Judge Harmon has been made a special order for tonight at 8 o'clock.

On motion the Association adjourned until 8 p. m.

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#### NIGHT SESSION.

The Association met pursuant to adjournment.

The President: In our afternoon session we adjourned until this hour for the purpose of hearing a special order which had been fixed at the morning session. It is the custom of the Alabama State Bar Association at all of its annual meetings to invite some distinguished lawyer to address it. I have no desire to detain this audience, for it is unnecessary. There are speakers, perhaps, who it is necessary to introduce, but on this occasion the Executive Committee, which has selected the orator for



this occasion, has selected one who needs no introduction in this broad land of ours where lawyers assemble. The Hon. Judge Harmon, of Cincinnati, Ohio, has been selected as our speaker, and I take great pleasure in presenting him to the Bar Association, and to the ladies and citizens of Anniston.

Judge Harmon then delivered his address.

(Appendix.)

Mr. Roulhac: I desire to offer the following resolution:

Resolved, That this Association hereby tenders its most sincere thanks to the Hon. Judson Harmon for his most able and valuable address to the Association at this meeting, and that he be, and he is hereby elected an honorary member of this Association.

The resolution was adopted unanimously.

On motion the Association adjourned to meet at Oxford Lake on July 7th at 10 o'clock a. m.

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Oxford Lake, Saturday, July 7th, 1906.

The Association met at 10 o'clock, pursuant to adjournment.

The President: The first order of business for this morning is a paper by P. A. McDaniel, Esq., on "Damages Recoverable for Mental Anguish When Unattended by Pecuniary Loss or Circumstances of Sickness or Death."

The Secretary: Mr. President: Mr. McDaniel wrote me some time ago that by reason of a large fire that occurred in his village, that he was so busily engaged with fire insurance cases that he did not have time to prepare his paper. There is no paper.

The President: The next order of business is the re-

port of Committee on Publication by the Chairman, L. M. Moseley, Esq.

The Secretary: There is no report.

The President: The next order of business is the report of the Committee on Grievances by the Chairman, George P. Jones, Esq.

The Secretary: I presume no complaint has been referred to that committee. There is no report.

The President: The next order of business is a paper by Jno. W. Tomlinson, Esq., on "The Judiciary."

The Secretary: I have a letter from Mr. Tomlinson in which he states that on account of sickness it is impossible for him to attend this meeting.

The President: The next order of business is the report of the Committee on Local Bar Associations by the Chairman, Hon. W. T. Sanders.

Mr. Sanders then read his report.

(Appendix.)

The President: What disposition shall be made of the report?

Mr. Hundley: I move that it be received, concurred in and filed.

Mr. O'Neal: Would it be proper to suggest that a committee be appointed as suggested in the report for the purposes stated?

The President: I will ask the chairman of the committee. I doubt whether or not that recommendation would be considered, the action of the Association without a vote to adopt it. It was a mere suggestion in the report.

Mr. W. T. Sanders: The recommendations contained in the report are in the form of mere suggestions, and I think it would be necessary, at any rate it would be proper, if this Association desires to adopt these sug-

gestions, to do so by formal resolution. I hope that this Association will adopt a resolution carrying into effect these suggestions. I believe that some good can be accomplished by putting them into practice; and am of the opinion that the greatest good that we can do to uphold the ethics of the profession in Alabama can be accomplished by putting these suggestions into practical operation.

There is no denial of the need of some committee, or of some tribunal, charged with the duty of making investigation into reported violations of law and ethics on the part of members of the profession. I have also much hope of good results from the posting of a printed copy of our code of ethics in the court houses of Alabama. It would there be read by people who now have no idea that there is such a thing as a code of ethics among lawyers. The judge's eye will fall upon it. The jurors will see it as they pass to and fro from their box. Lawyers will be constantly reminded of the principles which should govern their conduct. The general public would become impressed with the idea that there is an effort to maintain the highest standard of conduct on the part of the best members of the profession. And I entertain the hope, and cannot but believe that the result of posting this code in our court houses will tend to create a respect for court, and court proceedings, and will set forth with dignity and emphasis the mutual relations of the lawyer and the public; of the lawyer and the client; the lawyer and court.

I do not know what this Association has in the way of funds, nor have I made any investigation of the probable expense of the printing, framing and posting of this code; but if some arrangements cannot be effected by which the local Associations will themselves bear the expenses incident to this work, I would be glad to see some action taken by this

Association whereby a fund can be made available for this purpose. I believe if we will do this thing without delay, it will do a great deal towards popularizing this Association. It would be an earnest of the Association's purpose to live up to its code of ethics, and to exert its influence to the end that all of the members of the profession in Alabama shall do likewise. I believe such action will result in increasing the membership of the Association, and will tend to create some enthusiasm on behalf of its objects and aims.

Mr. O'Neal: I suggest that if you prepare a resolution to carry it into effect it would perhaps be the best course.

Mr. Lawrence Cooper: I quite freely concur and suggest that the Central Council has the same power as the committee would have. All the power now rests in the Central Council.

Mr. London: I do not agree with my friend. I happen to be the chairman for the past year; it is quasi judicial. We stand between the prosecutor and the accused, and when the case comes before us we have to determine it as if judges and not prosecutors. The suggestion of Mr. Sanders would relieve us very much if another committee would assume the burden of prosecuting, and let the Central Council act as it now acts.

Mr. Whitson: I am a member of the Central Council. This matter has been discussed in the Council, and we were unanimously of the opinion that under the duties imposed by the statute on that council, that we could not bring an accusation ourselves. The fact is, Mr. President, one of the chief ends of this Association, as I understand it, is to purify the practice of the profession in Alabama, and to bring the highest standard possible into the practice of the law. The Association, to a large extent, failed in that regard, in its object and purpose. We know that it is a sad and lamentable fact that much

of that class of practice is done in the State of Alabama.

Few people are willing to take the responsibility of bringing an accusation before the Central Council; only a few are willing to undertake the prosecution of any member of the bar, however flagrant the case against him. We find that among all the lawyers. Although an attorney may know that another attorney has been guilty of dishonorable practices, has been guilty of practices sufficient to disbar him, and although he feels that it would be better for the profession that he should be disbarred, although we all feel that the practices are visited, in the minds of the public, against the whole bar, and many regard the whole bar as of the same standard—although all that is true, yet no man wants to assume the role of a prosecutor and assume the individual responsibility.

Many appeals would be made to him, and these attorneys guilty of such practices have friends and relatives. It is true that the local Bar Associations might inaugurate these prosecutions, but I do not believe they will do it. The suggestion made in the report, the basis of the motion by Mr. O'Neal, is the only true solution, as I see it; to have a special committee of this organization charged with the duty of investigating cases. An attorney would feel it his duty, if called upon by this Association, to disclose facts, and the responsibility will be upon this committee bringing the prosecution before the Central Council, and the Central Council beginning the prosecution for disbarment as it now exists.

The only need of the statute would be to authorize the committee as suggested by Mr. O'Neal, to administer an oath. But there must be some means provided if anything is to be done; some means provided whereby complaints can be made before the Central Council, and it must be understood that they cannot inaugurate a complaint before

their own body, or decide whether they ought to be prosecuted in the courts and be themselves prosecutors. That is an impossible position to take, and I do not think anyone would disagree with the Council on those questions—but somebody has to do it.

Experience before the Central Council shows that complaints have been made and then withdrawn, and we would have no right to compel him to proceed with it. Something ought to be done, and I know of no better means than to have a committee charged with the investigation of cases, and when they found sufficient grounds, to make the complaint before the Central Council. Let the complaint be made and let the Council pass upon it, and then, if in their judgment, prosecution in the courts should be had, let it take its course under the law.

Mr. Lackey: It strikes me that the motion of Mr. O'Neal is eminently proper, or will be after we have adopted this report, and I fully concur in all that Mr. Whitson has said. I think that the Central Council ought to be an impartial body. They ought not to be required to hunt up evidence, and ought not to be allowed to hunt it up, but I think it is eminently proper that there should be a committee of this Association with power to investigate and make complaints where cases are found. Without that I do not think we will ever get the complaints before the Central Council that ought to be there, unless the Central Council goes out and hunts them up, and then it would not be a proper court to try them. A lawyer against whom complaint is made ought to have a fair and impartial trial, the same as a man indicted under the laws of the land, and there ought to be a court that the accused can go before with the assurance that he will have a fair and impartial trial. I think we need some prosecuting power, a prosecuting attorney as it were,

and I think the suggestion made by the chairman in that report is a very wise one.

I think the suggestion that we would need some legislation is a wise one. It is true we might adopt rules under which we could make members come before the committee, but there are lawyers who are not members of the Association. I think we ought to appoint a committee now and give it such powers as we can, and it would be a very valuable adjunct, but cases will come up where not only the testimony of members of the bar would be wanted, but of others, and I think if we could get a law enacted that would give this committee authority to summons witnesses and compel them to attend and testify, that it would aid very much in getting around the troubles that Mr. Whitson says the Central Council has found. I recognize, and I suppose we all do, that it is a very difficult matter for a committee that wants to sit as an impartial court to get matters before it, even where members of the committee know that they ought to be brought before it. Therefore I think that the suggestion of a committee to look after these matters and provide them with authority to institute proceedings before the Central Council, is a very wise suggestion.

Mr. O'Neal: My motion would be about this: That this Association appoint a committee, which will sit during the year at such places and times as it may determine, armed with authority, with inquisitorial power and authority to summons before it members of the bar and such other witnesses as may be required.

The President: The chair would suggest to Mr. O'Neal that the question now is on the report of the committee. Would it not be better to adopt the report and then prepare a resolution. If your motion was to amend the report of the committee, but you do not propose to amend

it, you only want to carry its provisions into effect more thoroughly.

Mr. O'Neal: I accept the suggestion, Mr. President.

The President: The question is upon the adoption of the report of the committee.

The report was adopted.

Mr. John London: I move that we now take a recess for five minutes.

The motion was adopted.

After recess the Association reassembled.

The President: The chair recognizes Mr. O'Neal, who was preparing a resolution just before recess, before proceeding with the regular order.

The Secretary then read the resolution:

Resolved, That the President of this Association appoint a committee, consisting of three members of this Association, which shall sit during the year at such times and places as it may determine, whose duty it shall be to inquire into all alleged breaches of the ethics of the profession or violations of law by attorneys, armed with inquisitorial powers; and whose further duty it shall be to institute proceedings before the Central Council for the purpose of disbarring or suspending any members whom they may deem to be guilty of offenses justifying disbarment or suspension.

Resolved further, That it shall be the duty of this committee to make an effort to secure at the approaching session of the Legislature all such legislation as may be necessary to effectuate its purposes, and to carry into full force and effect the powers vested in it by this resolution.

Resolved further, That this committee shall be charged with the duty of taking such action as may be necessary to secure the posting in a conspicuous place



in the court houses of Alabama of a printed and framed copy of the Code of Ethics of this Association.

Resolution seconded.

The President: The question is upon the adoption of the resolution.

Mr. W. T. Sanders: It was and is my opinion that the committee should consist of more than three in number, in order that the different sections of the State may have representation upon it; and it was also my idea that the committee could discharge its functions better if it were required to meet at designated places, or at some localities in designated sections of the State, at least once a year. If the committee waits for a complaint to come to it in order to act, it will probably never hear a complaint, and twelve months from now when the committee comes to report, it will likely read a report about an inch and a half long, setting forth that no complaints have come to it, and that it has done nothing, and begs to be discharged. On the contrary, if the committee is required to go into the different sections of the State, and hold sessions for the purpose of hearing complaints that may be brought before it, it would more than likely hear something of a tangible nature in reference to the many violations of law and ethics concerning which we hear flying reports and various rumors from time to time.

I would not have this committee constitute itself a "noseing body," going about in an offensive way; but believe that its sessions should be advertised, and that such publicity should be given to them, that lawyers and citizens would have the opportunity of coming before it, and making known any complaints which may exist in the various sections. If, for instance, it were made known that the committee proposed to hold sessions on certain dates in December, in Montgomery, in Birmingham, in Mobile, in Selma, in Anniston (I mention these places as they are fairly rep-

representative sections of the State), the lawyers and citizens in the vicinity of each of these places, if there are complaints, can and would likely come before the committee, and make them known, and I believe this to be a much more practical plan for accomplishing the objects of the resolution. I am aware that there are some difficulties in carrying out this idea.

There will be some expense attached to going about the holding the sessions contemplated; but I believe, Mr. President, you can find enough members of this Association who will be willing to assume that sort of obligation. These are my ideas as to the best method of making the committee effective; and in order to test the sentiment of the Association in regard to these suggestions, I move to amend the resolution by making it mandatory that this committee shall meet in designated places. I do not care particularly about the places, but in order to give definite form to the amendment in this respect, I move that the resolution be amended to the effect that the committee shall consist of five members to be appointed by the President, and that they shall sit at least once during the year in Decatur, Birmingham, Montgomery, Mobile, Selma and Anniston.

The President: The question is upon the adoption of the amendment offered by Mr. Sanders. Does the Association understand it, and are you ready for the question?

Mr. John London: I have had some experience myself on the Central Council. It was found difficult to get five members together, and in order to meet that difficulty the Association found it necessary to have a majority live in one city, and even when in one city it was found difficult to get them. If you make it five members scattered over the State, it is doubtful whether there will be a meeting of that committee, except at the next annual meeting of the Association. And as to going about

the State, where apparently there was no necessity for going, in my opinion you could not go to Mobile, Montgomery and elsewhere and accomplish any good whatever. My idea about the whole situation is this, that a good many offenses are committed, and those offenses which are known to attorneys and others, they are unwilling to assume the responsibility of a prosecution for disbarment, they are perfectly willing to lay that complaint before the sub-committee with the understanding that the sub-committee, if they saw fit, would stand for it before the Central Council. With that complaint laid before the committee it could formulate charges, lay it before the Central Council on information and belief, the Central Council then summons the party to make answer, and he need not know who was the accuser, and what we are concerned in, is whether offenses are committed or not, and not with the party who makes the accusation. I would be glad if Mr. Sanders could get members to go over the State, but I do not believe it practicable.

Mr. O'Neal: I was inclined to agree with Mr. London with reference to the number of the committee. I realize the difficulty to secure attendance of five members, but it occurs to me if the committee is required to meet in the different parts of the State, at stated times during the year, it would have a good moral effect upon the profession; every member of the profession would know that at a certain period of the year this committee would meet to inquire into offenses, and though no offenses may have been committed, the mere knowledge that this committee would meet, might have an effect to prevent any violation of our code of ethics. Therefore I think Mr. Sanders' suggestion is a wise one. The question of the number on the committee is a matter of expediency about which I am in doubt. It would be better if we could get five men who would agree to meet, enlarge the committee so as to represent the different sections of the State, there-

fore I am inclined to accept this amendment. Of course we want the expression of the Association in reference to the matter,—our purpose was to get the expression of the Association.

Mr. John London: I move to lay Mr. Sanders' amendment on the table.

Motion seconded.

Mr. Lackey: I did not get back as early as the chairman; I would like to have the proposition stated.

The President: The Secretary will read Mr. O'Neal's resolution, and the amendment thereto by Mr. Sanders.

The Secretary read the resolution and the suggested amendment.

Mr. John London: In order that there may be no confusion, or snap judgment, I would like to separate my motion. I move to lay upon the table that part of the amendment that proposes to increase the committee from three to five. Vote on that and then on the other.

The President: Does the gentleman have leave to qualify his motion? If there is no objection the chair will so put it. The motion is to lay on the table that part of the amendment which increases the committee from three to five members.

Motion to table adopted.

Mr. John London: Now I move to lay the whole amendment on the table.

Motion seconded.

The President: The question is to table the amendment.

Motion to table adopted.

The President: The question recurs upon the adoption of the resolution offered by Mr. O'Neal.

The resolution was adopted.

The President: The next order of business is the election of officers. Is the Committee on Nominations ready

to report? I believe Mr. Jeffries is the chairman of that committee.

Mr. Jeffries read the report of the committee, as follows:

REPORT OF COMMITTEE TO NOMINATE OFFICERS.

*To the Alabama State Bar Association:*

Gentlemen:

We, your Committee, appointed by your Honorable President, to nominate officers of this Association to serve for the next fiscal year, beg leave to report that we do suggest and nominate the following named persons for the respective offices, namely:

For President—Frederick G. Bromberg, of Mobile.

For First Vice President—H. S. D. Mallory, of Selma.

For Second Vice President—A. D. Sayre, of Montgomery.

For Third Vice President—J. H. Nathan, of Sheffield.

For Fourth Vice President—W. W. Whiteside, of Anniston.

For Fifth Vice President—Henry Fitts, of Tuscaloosa.

For Secretary and Treasurer—Alex Troy.

For the two committees to be nominated and selected by this committee, we do suggest and nominate the following:

Executive Committee—George W. Jones, Chairman; R. T. Goodwyn, Lee H. Weil, J. L. Holloway, Alex. Troy, Ex-Officio.

Central Council—John London, Chairman, Birmingham; Lee C. Bradley, Birmingham; Edward deGraffenried, Greensboro; E. K. Campbell, Birmingham; C. C. Whitson, Talladega.

All of which is respectfully submitted,

L. E. JEFFRIES, Chairman.

THOS. R. ROULHAC,

LAWRENCE COOPER,

S. L. BREWER,

Committee.

The President: Gentlemen, you have heard the report of the Committee on Nominations.

Mr. O'Neal: I move its adoption.

Mr. Nathan: It seems that it is taken for granted that Mr. Alex. Troy is the Secretary and Treasurer; the committee seems to have forgotten to mention him in the report.

The President: That is understood.

Mr. Jeffries: I will state that it is in the report, but overlooked by the chairman; we all know who is the Secretary and Treasurer.

The President: The question is upon the adoption of the report.

The report was adopted.

The President: The order of business as it appears on my paper for today is completed, but on yesterday for some reason there were one or two matters passed over, and I will therefore return to the call of yesterday's business. Report of the Committee on Jurisprudence and Law Reform by the Chairman, Hon. Jno. M. Chilton, has not been made. Has any one on that committee a report from it?

Mr. Willett: I have the report from Judge Chilton, who says that he is sick and unavoidably detained, and with the permission of the chair I will read the report.

The President: It will be in order.

Mr. Willett then read the report.

(Appendix.)

The President: You have heard the reading of the report. What is the pleasure of the Association with reference to it?

Mr. Hundley: I move that it be received, concurred in and filed.

The President: Are you ready for the question?

Mr. Knox: I move to amend that by stating that the report shall be received and filed.

Mr. John London: I second that motion.

Mr. Knox: The supreme court of this State has always stood very high in the estimation of the profession. In the complaint which the distinguished and learned chairman makes in his report of cases being decided on technicalities, I do not know of a lawyer in Alabama that

has made more reputation for making technical points than Judge Chilton. Any lawyer who will defend his case, or attempt properly to defend it will, of course, raise every question which the record will warrant, but the members of the bar of Alabama could not afford to pronounce judgment against the supreme court, at least without having the records of the cases before them upon which the supreme court made those decisions. I do not think that we ought, without careful examination, express our approval of the broad, sweeping terms of criticism in which the report is couched with reference to the supreme court. If we are going to take up that question we will have to consider it more thoroughly and carefully. I therefore move to amend by receiving and filing the report, and the Committee on Law Reform when preparing bills can bring the matter before the Legislature at the proper time.

The President: The question is upon the adoption of the amendment offered by Mr. Knox.

Mr. Hundley: I should not, from the reading of that report,—I only heard it read once,—I do not understand that applies to cases where motions are made by counsel, or where technical points are raised by counsel. The gentleman refers to Judge Chilton having made reputation along that line. I thought that it only referred to where the court disposed of it *ex mero motu*. It is a mere expression of opinion by this committee that in a great many cases the tendency of the court ought to be rather towards sustaining appeals rather than towards not sustaining them, or have them go off in this summary manner. I do not understand the report to be in favor of arraigning the supreme court at all. If we concur in it, it is the expression of this body that in our opinion the taking of appeals, and the sustaining of appeals, should be rather encouraged, rather than to dispose of them in this summary method, especially where there is no mo-

tion by appellant or appellee in the case, but *ex mero motu* by the court. That is as far as I understand the report to go. I do not understand that it goes to the extent of arraigning the supreme court.

Mr. Clarke: A part of the report seems to have criticised a ruling of the supreme court in regard to the signing of bills of exceptions. As I understand the synopsis of the opinion published in this morning's paper, the supreme court on yesterday delivered an opinion which would meet the views of the writer of the report.

Mr. Hundley: That is the fact.

Mr. Clarke: If we concur in that report we are criticising the supreme court upon the theory that they are standing upon the ruling which was had a year ago, which they had taken back before the report was read here. Therefore I am in favor of the adoption of the amendment which was offered by Mr. Knox, for that among other reasons.

Mr. Lowe: As I understand from the reading of the report, not having heard it read but once, but my friend on the left (Mr. Hundley) says that it is not an arraignment. It seems to me to be rather a severe arraignment of the supreme court, and it occurs to me that it is hardly becoming in the officers of the court, which we all are, to arraign the court, when a cursory reading of this report, if adopted, would be an arraignment of the court without due deliberation. If I correctly heard the reading of the report, it was largely upon their decisions upon technical questions. I do not believe that this Association can pass its official condemnation of the supreme court without more mature deliberation than we are able to give to that report today. Therefore I shall vote for the amendment.

Mr. Lawrence Cooper: I dare say, sir, that I am the last member of this Association to deal in any censure, but I think if this body cannot suggest to the supreme



court of Alabama what it thinks is right in the premises, it is time for us to quit business. Every member of that court, I may say, is very dear to me personally. The supreme court of Alabama has fallen into error time and time again by its own confession. The members of the court are human as we are human, and they are likely to err, and the fact that they err is no reflection upon their intelligence, and a suggestion of our objection is in no sense a censure of their judgment. I do not approve, sir, of the inconsistent relationship that bills of exceptions in different cases have shown, and which has caused such universal dissatisfaction among the members of the bar.

I have scarcely found a member of the bar who approves of the apparently needless dismissal of cases by reason of having no bill of exceptions. I do not think, under any circumstances, the court should of its own motion ever strike a bill of exceptions from the record; unless I make the motion as appellee it should stand as a proper record. I think it is traveling far away from the justice which is intended to be meted out to parties to give them a right of appeal and not the opportunity to exercise it. If consistent with the views of the appellee to submit a motion to dismiss, the court should consider it, and if not I think the court should let the bill of exceptions stand. As matter of fact, none of us at the present time understand when and how bills of exceptions should be signed,—none of us know when bills of exceptions are properly signed, we are all guessing at it, and we are all in a state of absolute uncertainty as to whether any record shows a proper bill of exceptions. It does seem to me when we make a suggestion.

Mr. Lowe: May I ask the gentleman a question? Would that become proper matter for legislative action?

Mr. Cooper: I am not criticising, Sir, it is not a matter of legislation, it is a matter of construction.

I think the law is ample as it is today to cure the difficulty, and I do not think any difficulty should exist; and, furthermore, to dismiss a case because it does not show the organization of the court is severe. I do not think such an appeal should be dismissed. I want to say in this connection, that it would be so easy to preserve the right intended to be protected by appeal, to suggest a diminution of the record rather than to throw the appellant out of court, and for him to find when he comes with a second appeal that the statutes of limitation prevent its operation.

Mr. Fitts: As a very young member of the bar, and as a much younger member of this Association, I feel some hesitancy in rising in opposition to the position taken by older and very distinguished members, both of the bar and of the Association. Something has been said about maturer deliberation upon the question now at issue being due by this Association. It is not often that I feel that I am qualified without special study to speak upon a proposition, but this subject of bills of exceptions is one to which I have given some attention.

It occurs to me the report as written by Judge Chilton, and read by Mr. Willett, voices the almost unanimous voice of the lawyers of this State, and it does occur to me that here and now is the time to give that voice expression. It seems to me that the one thing most worth while done by this Association at this meeting, is that upon yesterday it adopted a recommendation to the Committee on Legislation to frame a bill which should meet this condition. It seems to me that we have gone on record as opposed to a line of decisions which militated against the right of appeal, and that we can nowhere find better expression of our view and opinion that the judicial interpretation should be to uphold the right of appeal. I am unwilling to be charged with disrespect to the supreme court of Alabama.

As a member of the bar of this State, I am most justly proud of that court as now organized, and of its history, but it does seem to me that we who have briefs for the people have a right to speak out and say what we think is right, and what we think is wrong.

It seems to me that that able address which we had from our guest from Ohio last night said that the judiciary is independent of all power below high Heaven. I think that when we see that a glorious right is being taken away from us by a wrong tendency of judicial decisions, that we have a right, without striking at the independence of the judiciary, to say that we who represent the people in the courts, and standing for the rights of the people in the courts believe that wrong and injustice has been done and is being done, and for that reason I think that the motion as made by Mr. Hundley to concur in the report is the thing that fits the hour, is the thing that rounds out the work which this Association has done at this meeting along this line, and I therefore heartily oppose the amendment offered by Mr. Knox.

Mr. Whitson: I concur with Mr. Cooper. I do not see that the report of Judge Chilton is a condemnation or a criticism of the supreme court. It is a recommendation for legislation to meet decisions of the court, and which, as I understand the report, correctly states the result of those decisions. That is known to us all. We find by this morning's paper that upon one feature of the question of bills of exceptions, the supreme court has overruled its former decisions. This is gratifying intelligence to the profession. But there are some other recommendations made in that report as to decisions of the supreme court, some of which the court decided some years ago.

On the question that the record must show organization of the lower court, the court has held that

it was jurisdictional. We have seen the evil results of following the earlier decisions upon some of these questions, and I concur in the principle asserted in the report; that the right of appeal should be upheld; that it is a constitutional right. The report, as I understand it, states the facts as to what the supreme court has decided, without any criticism on the supreme court on account of those decisions, except to state that it has operated in many cases to deprive parties litigant of valuable rights, and that is unquestionably true, and it recommends legislation to meet these decisions.

We all know that the supreme court has held, that unless in the ruling upon a demurrer, formal words of judgment appear in the record, such ruling will not be considered an appeal; notwithstanding, it shows that the lower court overruled the demurrer, or sustained it. This report recommends something to obviate that defect, because of the clerk failing to enter the formal words on the ruling on demurrer.

A party ought to be entitled to review the ruling of the lower court where it appears from the judgment entry what the ruling was, though formal words are not used. Now the question is, can we express ourselves or our views upon the recommendations as to legislation to meet these decisions of the supreme court? Have not recommendations been made to enact laws to change the ruling of the supreme court, found to operate unjustly, or what has been found a wrong rule, although it may have been established? That is frequently the case. That is all that the report recommends. I do not understand the report is assailing the supreme court. It recites what the supreme court has decided. It is an argument in favor of legislation to meet those decisions, to obviate the doing of injustice in cases that practically, as a result of those decisions, amounted to a denial of the right of appeal.

Mr. Lowe: I only wish to ask, that I may better understand it, the re-reading of the report, as I understood it to contain a distinct arraignment of the supreme court for its decisions on technical questions. It seems to me that matter ought to go to the Legislature. It will not do for the officers of the court to arraign the court on technical matters. In order that we may better understand the purport of the report, I ask for its re-reading.

Mr. Bowie: The whole fault may have been due to imperfect legislation, and not to incorrect decision.

Mr. Lowe: I recollect some years ago that the courts of the country were not to be arraigned. I did not believe in that contention exactly, but I do not believe they should be arraigned on technical matters. I understand the reading of the report to contain arraignment matters.

The President: Any particular part of the report?

Mr. Lowe: It occurs to me it might be a proper thing for us to refer this report to the Grievance Committee.

The President: To the Committee on Jurisprudence and Law Reform?

Mr. Lowe: I suggest that it be read,—just that paragraph.

Mr. Sanders: If in order, I move the previous question.

Motion seconded.

Mr. Lowe: I think the first paragraph will be sufficient.

Mr. Sanders: I withdraw the motion, and at the conclusion of the reading of the first section of the report, I will renew my motion.

Mr. Willett then read the first section of the report.

The President: The question is upon the adoption of the amendment offered by Mr. Knox. Mr. Lackey has the floor.

Mr. Lackey: It strikes me that this report is a ques-

tion upon which we ought not to have any trouble. The report recommends legislation to meet certain ends. As a substitute for the motions that have been offered I am going to offer a motion: That the report be referred to the Committee on Legislation with instructions to the committee to recommend and undertake to procure such legislation as will secure appeals to parties who desire to appeal. It seems to me, Mr. President, that is the only question before us; it is a recommendation there of legislation. As I understand, while the writer does not agree that the rulings of the supreme court have been in the interest of securing a hearing on the merits of appeals, that it does not criticise the decisions of the court and law as it now exists, but that the object is that there should be legislation that will secure to every party a hearing on the merits of his case regardless of technical questions when he goes before the supreme court, and I do not see that the adoption of the report, or the rejection of it, would amount to much, except in the light that the adoption of it is a recommendation that we secure legislation to cure and to remedy the evils that that report point out.

I therefore move, Mr. President, that this report be referred to the Committee on Legislation with instructions to that committee to endeavor to have enacted such laws by the next Legislature as will secure a hearing on the merits of the case when an appeal is taken to the supreme court, and eliminate as far as possible technical objections.

Motion seconded.

The President: The question is upon the adoption of the amendment to the amendment.

Mr. Knox: Whatever may be stated in the opening sentence of the report with reference to needed legislation, if this Association approves the report, as was contemplated by the original motion, we approve all the

criticisms which that report contains of our supreme court. No deliberative body will pass upon a matter of this importance without referring it to a committee and have it thoroughly threshed out and considered in the committee. I have no objection to a reference of this report to the committee, but I object to any instructions to the committee as to how they shall report, whether favorable or unfavorable. If the gentleman will withdraw that part of his motion, I am willing to accept it—just a reference to the committee for consideration. We are not prepared to instruct the committee; we have not considered the question; we have not the facts before us, and it seems to me that it would be very unwise for us to take any radical action of that kind without sufficient consideration.

Mr. Lackey: I do not care to be particular, or technical, but it strikes me that the proper place for this matter is for the Committee on Legislation to take care of it. Really I do not think that it would be anything wrong for this Association to give instructions to the extent that I have indicated in my motion,—that they undertake to secure such legislation as will procure a decision on the merits of the case. Now, I do not want to do anything that would criticise the supreme court's decisions,—of course privately we all cuss them whenever they decide against us, that is a constitutional and common law right that none of us will surrender,—even my distinguished friend, Mr. Knox. I have known occasions when he did not surrender that right. But, Mr. President, in the motion that I make, I want to say that I have no thought of a criticism of the court, in fact I think under the law as it exists that the court has followed it as well as they could—not, perhaps, as well as you or I might, but as well as they could.

But the whole proposition is this, let us refer this report to the Legislative Committee, and I cannot see for the life

of me why it is wrong to say to the Legislative Committee that we would like for them to frame a law in such a way as when a man appeals to the supreme court he will get his case decided on what is in it. That is not a criticism on the court,—and, if necessary, I will go further and say in my motion that it is distinctly understood, and it must be understood, that this Association in passing that resolution, does it without any intention or idea of reflecting on the supreme court; that we think they have observed the law as it exists, but we think we ought to have a better law in regard to appeals, and that while we do not believe in judicial legislation, that we ask our Legislative Committee to go to the Legislature and get us a better one.

Now, I would personally not object to eliminating what my distinguished friend, Mr. Knox, who is much more capable of passing on these questions than I am, might suggest, but it suggests itself to my unsophisticated mind to say to the Legislative Committee to go down there and enact the best law you can, so our friends in the country, in Tallapoosa, Coosa and Clay, who don't know anything about the supreme court—our clients usually don't know there is one—can have it so when the case goes up there, the court can decide it on what is in it. I do not criticise the court, but merely ask our Legislative Committee to get up the very best law they can looking to this one end.

I am willing, Mr. President, to shape the motion to that end:

That this report be referred to the Legislative Committee with instructions to examine the statutes that have been enacted, and rulings that have been made by the supreme court, and to shape a law on appeals so that cases appealed to the supreme court may be decided on the merits of the appeal, instead of on technical questions.

Mr. Hundley: I heartily concur in what my friend,



Mr. Lackey, has said, and as the original mover to receive and concur in the report, I second the motion.

The President: There is an amendment before this; you may discard it, but we will dispose of it better in parliamentary form.

Mr. Lackey: I made my motion as a substitute for the original motion and the amendment.

Mr. Knox: I move to strike out so much of his substitute,—strike out that part instructing the committee as to what report it shall make.

Mr. Lackey: And I move to lay the motion of my Knox on the table.

The President: Both are out of order. The second amendment which is now pending is as far as you can go. We will reach it quicker.

Mr. Lackey: I submit that the substitute would have to be voted on before the amendment or resolution.

The President: Yes, it comes in as a substitute, an amendment to an amendment.

Mr. Lackey: Not an amendment to an amendemnt, but a substitute for the original motion and amendment.

The President: But considered as an amendment though a substitute. The question is on the substitute first. Is the Association ready for the question?

Substitute adopted.

The President: The question recurs upon the adoption of the amendment as amended by the substitute.

Mr. Knox: I move to strike out so much of Mr. Lackey's substitute as makes it mandatory on the committee as to what action it shall take.

Mr. Lackey: And I move to lay that motion on the table.

The President: The question is upon laying the motion to amend on the table.

Mr. Lackey: I will withdraw the motion to table for

Mr. Lowe to make his statement, with the understanding that he make it when he gets through.

The President: Do you withdraw it?

Mr. Lackey: Not without the conditions.

Mr. Lowe: I simply want to suggest to my colleague from Tallapoosa, that it seems to me that perhaps it is not exactly in good taste to instruct the committee to discharge its duties. What is that committee created for? Now, as I understand the motion, it instructs the committee to examine the statutes, and then from the best lights they can get, such study as they give it, to make a provision. It seems to me that a reference, mere motion to refer to the committee, carries with it the instructions to discharge their duties for which the committee was created and organized, and I think it would be much better form and taste, if the matters were referred to the Committee on Legislation without more, and without more I shall vote if that question is presented, for a mere reference of this resolution to the Committee on Legislation.

The President: The question is upon the adoption of the motion made by Mr. Knox, to amend the report.

Mr. Lackey: I move to table the amendment.

The President: That the amendment of Mr. Knox be laid upon the table; as many as favor laying upon the table will say aye; the ayes seem to have it.

Mr. Knox: Division called for.

The President: As many as favor the motion to table will rise and stand until the vote is counted.

The Secretary: There are 20 ayes, and 12 noes.

The President: The ayes have it, and the motion is laid upon the table.

Mr. Knox: I rise to point of order. Under general parliamentary law, the tabling of an amendment will carry the whole proposition to the table, and I make

the point of order that the whole matter, report and all is on the table.

The President: Without any special rule before me, the chair will state that he is inclined to the opinion that the point of order is well taken.

Mr. Lackey: And from that I appeal.

Mr. Hundley: I rise to a point of order.

The President: The gentleman will state it.

Mr. Hundley: There was the original resolution and then an amendment and also a substitute. The substitute was adopted. Then Mr. Knox made an original proposition, and that original proposition is laid upon the table and nothing else.

Mr. Knox: I moved to amend.

Mr. Hundley: I beg pardon; it had nothing to do with the original proposition.

The President: I do not know of any special rule that we have governing our body on the subject, and the point raised is so nice the chair will submit the point of order to the Association and let it settle it.

Mr. Hundley: I suggest that the parliamentary position be ascertained from the stenographer's notes. The original proposition as submitted by Mr. Lackey was adopted, clean cut; that ended that and placed it upon the record. Then my friend, Mr. Knox, moved to amend the resolution, after debate, and after motion to lay upon the table, made his motion to amend as an original proposition, and did not carry the other because adopted before that, and it was an original proposition.

Mr. Knox: When Mr. Lackey's substitute was adopted it took the place of the original resolution; it stood then just in the attitude of the original resolution. I moved to amend—

Mr. Hundley: When did you move to amend?

Mr. Knox: After the adoption of the substitute. Of course the original resolution has never been adopted—

the substitute was adopted, which, of course, stands before the Association after its adoption as the original proposition. I moved to amend. They lay my amendment on the table; it carries with it the whole proposition just as if my amendment had been addressed to the original proposition. What is a substitute? Why it merely takes the place of the original resolution; it stands instead of the original resolution. It is mere quibbling, it seems to me, to say that under parliamentary law an amendment to an original proposition laid upon the table will carry the whole proposition, but an amendment to a substitute which stands instead of the original resolution will not have the same effect. According to all authorities, Mr. President, Cushing, and every authority on parliamentary law that I have ever seen, if you lay the amendment to a pending proposition on the table, it carries the whole proposition with it, and the President's ruling was undoubtedly correct on that proposition. Of course the Association can take it from the table; there are means to get around it, but there is no way for the chair to escape responsibility, because it is a matter of law.

They are criticising the supreme court for making technical decisions. The judges of the supreme court take an oath to uphold the law. How can the supreme court say that it will not deny this litigant his right to have his case decided on a technical proposition, when it is the law that it should be so decided? The parliamentary question before the President, I admit is technical, but it is a question fortified by all the parliamentary decisions on the question, and the chair could not escape making the decision that it did make.

Mr. Lackey: Mr. President—

The President: Let us see where we are.

Mr. Lackey: That is what I am on the floor for now, —we are right here! The report was made, and a mo-

tion made to adopt it. Mr. Knox made a motion to amend it. I offered a substitute for the amendment and the report, and that substitute was adopted, and after the substitute was adopted, then my friend, Mr. Knox, moved to amend what we had already adopted. He moved to amend what we had already done, and now because that was laid upon the table, he says that takes with it what had already been passed upon, voted upon before and decided. If it was a pending measure, his construction of parliamentary law is perhaps right, but it is not a re-action back-action kind of thing; it does not go back and undo what has already been done. If it was a pending measure, a motion to table might have tabled the whole proposition, but the substitute I offered had already been adopted when Mr. Knox made his motion to amend. In fact, his motion was out of order, but it was a quicker way to lay his motion on the table. His motion was out of order to amend what was already adopted. It would have to have been an original motion.

There is but one thing that I want to say. 'He, Mr. Knox, speaks of this resolution as censuring or criticising the supreme court. I want to disclaim most emphatically anything of the kind. I did disclaim it when I made my motion for the substitute, that it be referred to the Committee on Legislation and that they be instructed to investigate what our court had determined the present statutes meant, and to enact such statutes as were necessary in order to procure an appeal that would secure a trial on the merits, and I disclaim here, in this presence, any spirit or any intention, or the remotest intention to criticise any decision that the supreme court of Alabama has ever rendered.

Now when it comes, as I said a while ago, they decide my case against me, and I go out and talk with you of my case, that is different,

and I do not know anybody in this presence that can criticise me for that because I have heard most of them do the same thing, so there is no criticism on that line. But I do insist that after the substitute was adopted, and had already become the rule of action of this Association, and so declared by the President, that a motion to amend it then, and the laying on the table of that motion does not undo what the Association had done; does not undo what we had already adopted, and lay that on the table.

Mr. Bowie: The answer to the gentleman from Tallapoosa is a simple statement of the facts. The adoption of a substitute to an amendment and the pending proposition does not complete the matter from a parliamentary standpoint at all. It is merely an amendment,—they call it a substitute,—but at last it is an amendment to a pending proposition, and after the proposition has been amended, then the original proposition as amended must be adopted. That applies to a substitute just as much as it would to an amendment in the first or second degree. Now the original proposition as amended has never been approved, and therefore it was still open to further amendment, and the proposition made by the gentleman from Madison and by the gentleman from Tallapoosa proceeds upon an incorrect assumption of fact. The question is still before them, and the point of order made by the gentleman from Calhoun, it seems to me, is good.

Mr. Lackey: That we may have a vote upon it, I move that we take from the table the substitute and the amendment of the gentleman from Calhoun, and that we take a vote upon the amendment of the gentleman from Calhoun.

Motion to take substitute from the table adopted.

The President: The question recurs on the amendment. Will Mr. Knox please state his amendment now?

Mr. Knox: My amendment is simply this,—to carry out the idea which I first advanced, and which Mr. Lowe also sustained me in, that it is unnecessary to instruct this committee; it is its duty to consider this thoroughly and carefully and report such recommendation as it may decide. My motion is to strike out the mandatory feature of Mr. Lackey's motion.

Mr. Lackey: My position on that is,—that it doesn't do any harm to let them know what the views of this Association are.

Mr. Willett: I rise to a question of high privilege.

The President: The gentleman will state it.

Mr. Willett: I am informed by the Committee on Barbecue that everything is now ready.

Mr. Knox: I move to adjourn to consider the barbecue.

Mr. Whitson: I move to table the motion to adjourn.

The President: The motion to adjourn is not in order; if insisted upon I am bound to put the motion, but I suggest to the gentleman that it means recess—if you will name some hour—

Mr. Knox: I just move we adjourn.

The President: It will adjourn us sine die if we adopt it.

Mr. Roulhac: The Committee on Legislation has not reported yet.

Mr. Knox: I will withdraw the motion to adjourn.

The President: The question is upon the adoption of the amendment offered by Mr. Knox.

The amendment was lost.

The President: The question recurs upon the adoption of the original resolution offered by Mr. Lackey.

The resolution was adopted.

The President: The next business in order is the report of the Committee on Legislation, which was called yesterday. I am informed that there is a report here.

Mr. Brewer: That report has been turned over to me,

and there are a number of bills attached to it, drafted bills, and as the chairman of this committee, Judge Mayfield, now has in hand the duty of codifying the laws of the State, I suggest that the matter be turned over to him for consideration.

Mr. Jeffries: I move that the report be received and filed, and that these bills be referred to Judge Mayfield, a member of that committee, without any action on our part.

The President: It is moved and seconded that the report be received and filed and referred to Judge Mayfield, who is a member of that committee and the codifier, without recommendation.

The motion was adopted.

Mr. Sternfeld: Mr. President (then turning to the members of the Association): The services rendered by our distinguished President and his exhaustive report have been instructive, inspiring and are of inestimable value to this Association. I, therefore, move that the thanks of this Association be tendered the Mayor and citizens of the City of Anniston, as well as to the local Bar Association of Calhoun County, for the courtesies extended the Alabama State Bar Association during the past two days, as well as for the pleasant events and moments its members have spent here, which have been made possible only by the hospitable efforts of the Mayor and citizens of Anniston and the local bar of Calhoun.

All in favor of this motion will signify it by rising.

The motion was unanimously adopted.

Mr. Lackey: I move to amend by inserting our efficient Secretary.

Mr. Sternfeld: Including our Secretary.

The President: Will the gentleman put the motion?

Mr. Sternfeld: All in favor of the motion will signify the same by saying aye.

The motion was adopted.

The Association adjourned *sine die*.



Address  
by  
George P. Harrison  
PRESIDENT OF THE ASSOCIATION

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*Gentlemen of the Alabama State Bar Association:*

We have assembled here to hold our twenty-ninth annual meeting; and I congratulate you upon the growth and good works of our Association. Let us, year by year, as we come together and labor for the good of our State, as well as for the good of our profession, appreciate more fully the dignity of that profession which has for its study the law that holds the people of this State together; laws, too, that emanate from the people themselves, that have their sole force and operation from the public conscience and the public will.

The civil law, the *jus civile* of the Roman Empire, is the scientific embodiment and codification of the rescripts of Emperors or the decrees of Senates, in the framing of which the subjects and people of that Empire had no voice; the jurisprudence which it is the object of our Association to advance, the system of laws which we desire to improve, is the embodiment of the experience and wisdom of the English speaking race, the expression of the will of the communities that make up the people of a great State. There is no subject of investigation more worthy the exercise of an enlightened intelligence or more befitting the thoughtful attention of the members of the profession to which we belong.

The Constitution of our Association makes it the duty of the President to communicate in his annual address the most noteworthy changes in statute law on points of

general interest, made in the several States and by Congress during the preceding year.

In compliance with this duty, I have examined all the Acts of the various State Legislatures to be found in our Supreme Court Library, and ascertain that in only three States of the Union, have the Legislatures been in session during the past twelve months, whose Acts have been published, to-wit: Connecticut, Georgia and Michigan. From a careful examination of these I note the following, to-wit:

#### CONNECTICUT.

1. "An Act Concerning Discrimination or Alienage, Race or Color. It prohibits any person from depriving another on this account from the full and equal enjoyment of the advantages, facilities and accommodations or privileges of any place of public accommodation, amusement or transportation." (This law would hardly pass an Alabama Legislature.)

2. "An Act Concerning the Sale of Certain Narcotic Drugs." (It prohibits the sale of cocaine and other drugs, except upon physician's prescription. This or a similar law would be a great blessing to the negro population of Alabama.)

3. "An Act Concerning Neglect to Support Wife or Children." It makes it a felony for any person to unlawfully neglect or refuse to support his wife or children. (While the penalty may be too severe, the object of the legislation is praiseworthy.)

4. "An Act Annuling the Existence of Certain Corporations. This Act annuls the corporate existence of about 3,000 corporations, named in the Act, to take effect on 16th February, 1906; but provides that if any of the corporations named in the Act shall make the annual report required by law on or before the 15th February,

1906, and pay to the Secretary of State \$25.00, it shall be exempt from the operation of the Act." (This is apparently a new way to tax corporations.)

### GEORGIA.

1. "An Act to make it the duty of the judge to continue any case in any court of the State when any party thereto, or his leading attorney shall, when such case is reached, be absent from said court by reason of his attendance as a legislator upon the General Assembly, to provide that any person summoned to serve as a juror in any court of the State shall be excused from such service during his absence from said court by reason of his attendance, as a legislator, upon the General Assembly and to provide that any person summoned as a witness in any case in the courts of the State, shall be excused from attendance on such court, when his absence is caused by his attendance, as a legislator, upon the General Assembly, and to provide for the taking out of interrogatories for such absent witness in civil cases, as provided by law." (The provisions of this law are clearly expressed in above caption, and shows that the Georgia Legislators are capable of taking care of themselves.)

2. "An Act to require the sheriffs of the several counties of this State to purchase, or have the same purchased, not less than two nor more than four well-trained track-hounds or other dogs suitable for the purpose, to track and catch criminals."

The dogs provided for are to be purchased and maintained at the expense of the several counties of the State. From this it would appear that criminals have been escaping in our sister State.

3. "An Act to further provide for the safety of persons while bathing in the surf on the seacoast of the State."

It provides, among other things, that the proprietors or keepers of hotels or other public houses on the seacoast, to which the public may resort for purposes of surf-bathing, shall at all times during the bathing season, keep an expert swimmer attired in a bright red bathing suit, on the breast of which, in white letters, shall be the words, 'Life Saver,' and such expert swimmer shall have on at all times while on duty, a leather harness of a prescribed make, and protect and assist any bather who may need assistance..” (This may increase the popularity of the resorts on the Georgia coasts. It will doubtless mean the safety of the sea bathers.)

4. “An Act to create a State Institution, to be known as the Georgia State Reformatory, for the detention and punishment of certain offenders of the age of sixteen years and under; to provide for the management and control of the same; to prescribe certain rules and regulations for the government of said Reformatory; to provide for a superintendent and other employees to be used in said Reformatory; to provide for the erection of certain buildings and the purchase of other property necessary to carry out the purposes of the Act; to provide for the necessary appropriations to carry out the purposes of this Act and for other purposes. It provides that all persons of the age of sixteen years or under who have been, after the opening of said Reformatory, duly convicted in any of the courts of this State, of any crime against the laws of this State, not punishable by death or imprisonment for life, may, in the discretion of the judge having jurisdiction, be committed to the Georgia State Reformatory.

5. “An Act to abolish the colored troops of the State of Georgia from the militia of the State, to provide for the discharge of colored troops, active and retired, and for other purposes.”

It simply abolished all colored troops then organized in

the State of Georgia, and discharged the officers and men from the military service of the State.

### MICHIGAN.

1. "An Act to authorize the formation of women's clubs." It allows them to incorporate and become corporations.

2. "An Act to provide for the payment of bounties for the killing of English sparrows." It provides for the payment of two cents for delivery of each bird, and that the birds shall be burned after delivery. (It will be well to watch the result of this legislation.)

3. "An Act which declares that 'all marriages heretofore contracted between white persons and those wholly or in part of African descent,' to be valid and effectual in law for all purposes." (There is no accounting for the tastes of some people.)

- 4. "An Act to provide for the compulsory education of children, with penalty for failure to comply with the provisions of the Act."

With a few exceptions, it requires every parent, guardian or other person in control and charge of the child or children between and including the ages of seven and fifteen years, to send such child or children to the public schools during the entire school year.

5. "The Negotiable Instruments Law, as recommended by the American Bar Association."

6. The Acts of the Legislature of Michigan contains numerous Acts for the protection of fish, in the form of local laws.

### CONGRESSIONAL LEGISLATION.

Some acts of public and general interest have been passed by the 59th Congress, at the last session, of which I beg to communicate the following, to-wit:

1. "An Act to provide for the appropriate marking of the graves of the soldiers and sailors of the Confederate Army and Navy, who died in northern prisons and were buried near the prison where they died, and for other purposes."

This Act appropriates two hundred thousand dollars, or so much thereof as may be necessary, to carry into effect the purpose indicated, and provides for the appointment of a Commissioner, by the Secretary of War, to ascertain the location of such Confederate graves not heretofore located, and to compare the names of those already marked with the registers in the cemeteries and correct the same when found necessary, as preliminary to the work of marking the graves with suitable head stones. This appointment has been given to a gallant Confederate soldier (Col. Elliot, of South Carolina), and all of which we of the South, especially the old Confederate Veterans, duly appreciate.

2. "An Act to prevent the unlawful wearing of the badge or insignia of the Grand Army of the Republic, or other soldier organization." This Act is a good one, as far as it goes, but it does not go far enough. It should have included the badge of the United Confederate Veterans.

3. "An Act, to create a juvenile court in and for the District of Columbia."

This appears to be a carefully prepared Act of twenty-six sections, and is clearly a movement in the right direction. The court is given, original and exclusive jurisdiction of all crimes and offenses of persons under seventeen years of age hereafter committed against the United States, not capital or otherwise infamous, and not punishable by imprisonment in the penitentiary, committed within the District of Columbia, except libel, conspiracy, and violations of the postoffice and pension laws of the United States, and also of all offenses of persons under

seventeen years of age hereafter committed against the laws, ordinances, and regulations of the District of Columbia, and shall have power to examine and commit or hold to bail all persons under seventeen years of age, either for trial or other examination, in all cases, whether cognizable therein or in the supreme court of the District of Columbia.

4. "An Act making it a misdemeanor in the District of Columbia to abandon or willfully neglect to provide for the support and maintenance by any person of his wife or of his or her minor children in destitute or necessitous circumstances."

Believing that there is great need in Alabama for some such legislation and desiring to bring the same to the attention of the Bar of the State, I give this Act in full, which is as follows, to-wit:

"Be it enacted by the Senate and House of Representatives of the United States of America and Congress assembled, that any person in the District of Columbia who shall, without just cause, or any person who shall, for the support and maintenance of his wife in destitute or necessitous circumstances, or any person who shall, without just excuse, desert or willfully neglect or refuse to provide for the maintenance of his or her minor children under the age of sixteen years in necessitous or destitute circumstances, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in the work house of the District of Columbia at hard labor for not more than twelve months, or by such fine and imprisonment; and should a fine be imposed it may be directed by the court to be paid in whole or in part to the wife or to the guardian or custodian of the minor child or children: Provided, that before the trial, with the consent of the defendant, or after conviction, instead of imposing the punishment hereinbefore provided, or

in addition thereto, the court in its discretion, having regard to the circumstances and to the power to make an order, which shall be subject to change by it from time to time as circumstances may require, directing the defendant to pay a certain sum weekly for the space of one year to the wife, or to the guardian or custodian of the minor child or children, or to an organization or individual approved by the court as trustee, and to release the defendant from custody or probation for the space of one year upon his or her entering into a recognizance, with or without sureties, in such sum as the court may direct. The condition of the personal appearance in court whenever ordered to do so within the year, and shall further comply with the terms of the order and of any subsequent modification thereof, then the recognizance shall be void, otherwise of full force and effect.

If the court be satisfied by information and due proof, under oath, that at any time during the year the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him under the original conviction, or enforce the original sentence, as the case may be. In case of forfeiture of a recognizance and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid in whole or in part to the wife, or to the guardian or custodian of the minor child or children.

Sec. 2. That no other evidence shall be required to prove marriage of such husband and wife, or that such person is the lawful father or mother of such child or children, than is or shall be required to prove such facts in a civil action. In all prosecution under this Act any existing provisions of law prohibiting the disclosure of confidential communications between husband and wife shall not apply, and both husband and wife shall be competent and compellable witnesses to testify to any and



all relevant matters, including the fact of such marriage and the parentage of such child or children. Proof of the desertion of such wife, child, or children in destitute or necessitous circumstances or of neglect to furnish such wife, child, or children necessary and proper food, clothing, or shelter is *prima facie* evidence that such desertion or neglect is willful.

Sec. 3. That it shall be the duty of the superintendent in charge of the work house of the District of Columbia in which any person is confined on account of a sentence under the law to pay, out of any funds available, over to the wife or to the guardian or custodian of his or her minor child or children, or to an organization or individual approved by the court as trustee, at the end of each week, for the support of such wife, child, or children a sum equal to fifty cents for each day's hard labor performed by said person so confined."

Approved March 23, 1906.

5. "An Act to provide for the organization of the consular service of the United States."

Under the provision of this Act Consuls are divided into nine classes, and their salaries fixed from one to five thousand dollars. The Consuls General are divided into seven classes with salaries ranging from three to twelve thousand dollars. The Act more clearly defines and regulates the duties of the Consular department than has heretofore been done.

6. "An Act granting authority to the Secretary of the Navy, in his discretion, to dismiss midshipmen from the United States Naval Academy and regulating the procedure and punishment in trials for hazing at the said Academy."

While from the caption of this Act, it would appear that too great power is lodged in the Secretary of the Navy, yet the body of the Act requires that this power

can be exercised only on the application of the Superintendent of the Academy and with the written approval of the President. Thus guarded, it may work well.

7. "An Act making appropriations for the payment of invalid and other pensions of the United States, for the fiscal year ending June thirtieth, nineteen hundred and seven, and for other purposes."

This Act appropriates one hundred and thirty-nine million dollars for pensions, and the following amounts for expenses incident to paying out the same, to-wit:

For salaries of eighteen agents for the payment of pensions, at four thousand dollars each, seventy-two thousand dollars. For clerk hire, and other services, four hundred and thirty-five thousand dollars: Provided, that the amount of clerk hire, and other services, for each agency shall be apportioned as nearly as practicable in proportion to the number of pensioners paid at each agency, and the salaries paid shall be subject to the approval of the Secretary of the Navy.

For rents, New York, four thousand five hundred dollars; Washington, two thousand five hundred dollars; in all, seven thousand dollars.

For stationery, fuel, lights and other necessary expenses, thirty thousand dollars.

For examination and inspection of pension agencies, as provided for by the final provision of the Act of August eighth, eighteen hundred and eighty-two, amending section forty-seven hundred and sixty-six, Revised Statutes, one thousand five hundred dollars.

The Act further provides, "That the age of sixty-two years and over shall be considered a permanent, specific disability within the meaning of the pension laws."

Surely the Congress must have become "Oslerized" in its opinion, or else the Confederate Veteran is better preserved than those who wore the blue. Attend a Confederate Reunion, and I'll show you many long past sixty-

two years of age, that are yet able to earn an honest living.

8. "An Act making additional appropriations for the public service on account of the earthquake and attending conflagration, on the Pacific Coast."

It makes a special increased appropriation of one hundred thousand dollars to the Navy Department, and one of seventy-thousand, to the Postal Service.

9. An Act providing for compulsory education in the District of Columbia. It requires all children in the District of Columbia, between the ages of eight and fourteen years, to attend some school, during the period of each year the public schools in the District are in session. It provides a penalty for both parents and children, who fail to comply with the law.

10. An Act relating to liability of common carriers in the District of Columbia and Territories and common carriers engaged in commerce between the States and between the States and foreign nations to their employers. It establishes the doctrine of comparative negligence, and leaves all questions of negligence and contributory negligence entirely to the jury.

11. An Act to amend section sixty-four of the Bankruptcy Act, and reads as follows:

"Fourth. Wages due to workmen, clerks, traveling or city salesmen, or servants which have been earned within three months before the date of commencement of proceedings, not to exceed three hundred dollars to each claimant."

12. An Act to amend section fifty-two hundred, Revised Statutes of the United States, relating to national banks. It allows national banks to lend to one person one-tenth of its surplus fund, in addition to one-tenth of the capital stock.

13. An Act to enable the people of Oklahoma and of the Indian Territory to form a constitution and State

Government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State Government and be admitted to the Union on an equal footing with the original States.

This in effect provides for one other State—Oklahoma—and allows the people of Arizona and New Mexico to vote separately as to whether or not they desire to form one State.

Just before the adjournment of Congress, last week, a number of very important bills were passed which I have been unable to examine; but among which I note the following:

The Railroad Rate Bill, consideration of which was begun with the session and continued throughout.

The Pure Food enactment and the Meat Inspection Provision are, also, important changes in the Federal attitude toward both the producer and consumer of the country.

The immunity of witnesses from prosecution who give testimony before Government tribunals, was made the subject of an enactment which clearly states when such immunity obtains and when otherwise.

A bill removing the internal revenue on denatured alcohol, also was passed.

The type of the Panama Canal was fixed, thus settling a question which has perplexed both the professional and lay mind. The President is to build a lock level canal, and a total of \$39,000,000 for the year was accorded to him for that purpose. It was required that material for the canal should be of American manufacture unless the President found the price excessive, in which case authority was given to him to buy abroad.

Congress gave great care to the draft of a bill intended to preserve the scenic beauty of Niagara Falls, and the measure was passed.

The tariff to be collected by the Philippine Government on goods entering the island trade was revised.

The government will participate in the Jamestown Tercentennial Exposition, and an appropriation of \$1,-325,000 out of the Federal Treasury was authorized for that event.

Speedy appropriations for the San Francisco sufferers resulted from requests by the President. Two and a half millions were donated directly, and supplies from the stores of the government nearly equaled that amount in value.

Private pension legislation for the benefit of the old soldier who is unable to receive a pension under the statute laws, kept up its usual heavy pace.

#### CASES OF INTEREST.

I note the following cases of interest, recently decided, to-wit:

1. Disorderly House. The Supreme Court of New Jersey declares that those who maintain a place where usurious rates of interest are taken, and where the statutes prohibiting usurious interest are habitually violated, are indictable for keeping a disorderly house. *State v. Dimant*, 62 Atl. 286.

2. Intoxicating Patent Medicines. Under the North Dakota prohibitory liquor law it is held in *State v. Williams*, 104 N. W. 546, that a sale of a patent or proprietary medicine, containing alcohol, is not necessarily a violation of the law, though not made by a licensed pharmacist, and that whether such a sale constituted a violation of law depended upon whether the preparation was sold as a medicine or for use as a beverage which was a question for the jury.

3. Accident Insurer's Liability for Death Caused by Gas. An accident insurance policy, providing that the

insurance shall not cover death resulting wholly or partly, directly or indirectly, from any gas or vapor is construed in *Travelers Ins. Co. v. Ayers*, 75 N. E. 506, as not exempting the company from liability for death caused by an unconscious and involuntary inhalation of gas. It is to be noted that the wording of this policy differs somewhat from that of those similarly construed in *Paul v. Travelers Ins. Co.*, 112 N. Y. 472, 20 N. E. 347, and *Healy v. Mutual Accident Assn.* 133 Ill. 556, N. E. 52, and other later cases following the New York case.

4. *Mental Anguish from Delayed Telegram.* In *Dayvis v. Western Union Telegraph Co.*, 51 S. E. 898, the Supreme Court of North Carolina delivers a holding which seems to extend in some degree the rule, hitherto recognized in North Carolina, that for a negligent failure to deliver a telegram, there may be a recovery of damages based on mental anguish, though no physical injuries have resulted. It is determined in this case that where plaintiff's wife missed a certain train, on which her husband expected her to arrive, and sent a message stating that she had missed the train and would arrive the next day, informing the operator at the time that she and her two children had missed their train and that her husband was to meet her, and would be worried unless he got the message, there was sufficient support for a claim of mental anguish on the part of the husband, and sufficient notice to the Telegraph Company that, if the message was not delivered and the husband was left in ignorance of the condition and whereabouts of his children, it might result in actionable suffering and mental anguish. Justice Brown dissented on the ground that the message was not of such a nature that its delay could produce mental anguish, and draws a distinction between anguish and anxiety.

5. *Preference to Debts Due State.* A case illustrating the departure in this country, from the rule according to

debts due the government a prerogative right to priority in England is *State v. Williams*, 61 Atl. 297, where it is determined that the State has no right to preference over other creditors of an insolvent corporation, where it has a simple contract claim, and no steps to enforce it are taken until after appointment of a receiver for the corporation.

6. **Binding Instruction in Homicide Cases.** In *Commonwealth v. Fellows* 61 Atl. 922, the Supreme Court of Pennsylvania holds that an instruction in a homicide case that the court does not deem it necessary to define murder in the second degree or manslaughter, for the reason that there are no elements of manslaughter or murder in the second degree in the case, but that the defendant is guilty in the first degree or not guilty at all, is reversible error, because interfering with the statutory right of the jury on a conviction of murder to determine the degree of the crime.

7. **Right of Bankrupt to Life Insurance Policy.** A section of the bankruptcy act, which has given rise to somewhat different views in different federal courts is treated of in *Van Kirk v. Vermont Slate Co.*, 140 Fed. 38 Bankr. Act, P. 70a (U. S. Comp. St. 1901, p. 3451), giving to a bankrupt the right to retain a life insurance policy having a cash surrender value, by paying such value to the trustee, is there construed as not affected by the death of the bankrupt after adjudication. This section is also held to refer only to policies which by their express provisions give the bankrupt the right to receive a fixed or ascertainable sum therefor, so that policies giving no such contract right pass to the trustee as assets of the estate.

8. **Civil Liability of Inferior Judicial Officer.** *Rush v. Buckley*, 61 Atl. 774, indicates an at least partial extension to inferior judicial officers of the established rule that judges of courts of superior jurisdiction are not

liable in civil damages for their judicial acts, even where such acts are in excess of their jurisdiction. Whether this immunity is equally applicable to a judge of an inferior court or to a magistrate of limited jurisdiction is a question as to which the authorities are not uniform, but the court concludes that the tendency of recent decision is towards the holding that where a judge of an inferior court or a magistrate is invested by law with jurisdiction over the general subject-matter of an alleged offense—that is, has the power to hear and determine cases of the general class to which the proceeding in question belongs—and decides, although erroneously, that he has jurisdiction of a particular offense, of which complaint is made to him, or that the facts charged in the complaint constitute an offense, and acts accordingly, in entire good faith, such erroneous decision is a judicial one, for which he is not liable in damages.

9. Legitimacy of Children of Slaves. An unfortunate, but apparently unavoidable, determination as to the legitimacy of children born of slave parents prior to the war, is contained in *Johnson v. Shepard*, 39 South. 223, where it is held that a child born of slave parents, who cohabitated before the war, when they were incapable of contracting marriage, is illegitimate, so that a legitimate half-brother, born after the war, cannot inherit from him.

10. Preventing Speculating in Theatre Tickets. The New York Court of Appeals, in *Collister v. Hayman*, 76 N. E. 20, holds that the owner of a theatre has a right to insert in the tickets issued by him a provision that they will not be recognized or accepted if purchased on the sidewalk from a ticket speculator. The owner of a treatre owes no duty whatever to the public, and can impose any conditions that he chooses upon admission to the theatre, which conditions will be binding upon the



original holder or any subsequent purchaser of the ticket with notice.

11. **Prohibiting Use of Flag for Advertising Purposes.** In *Halter v. State*, 105 N. W. 298, the Supreme Court of Nebraska takes issue with the courts of both Illinois and New York in their recent holdings in *Ruhstrat v. People*, 57 N. E. 41, and *People ex rel. McPike v. Van DeVarr*, 70 N. E. 965, that the statutes prohibiting the use of the national flag for advertising purposes are unconstitutional. The Nebraska court is of the opinion that the right to advertise whiskey, beer, tobacco, etc., by use of the national flag, is not the subject of an express or implied constitutional grant, so that it may be properly taken away by the State in the exercise of its police power.

12. **Licensed and Transient Merchants.** Code Iowa, P. 700, giving cities and towns power to define by ordinance who shall be considered transient merchants, is construed in *State ex rel. Town of Segourney v. Nelson*, 105 N. W. 327, as only giving the town authority to determine what merchants shall be considered as transient, and not as empowering it to declare persons to be merchants who by universal acceptance in the business world are not such. Consequently it is held that one employed as a traveling salesman, who received a stated salary and expenses and displayed samples and solicited orders from the customers, which he sent to his employers, was not a transient merchant within a city ordinance requiring a transient merchant to take out license.

13. **Chicago Drainage Case.** The Chicago Drainage Case, officially known as *State of Missouri v. State of Illinois*, and which was decided on demurrer in 21 Sup. Ct. 331, has been finally determined, the opinion appearing in 26 Sup. Ct. 268, where it is held that the State of Illinois and the sanitary district of Chicago cannot be enjoined from discharging sewage into the Mississippi river, mixed with a large volume of pure water from

Lake Michigan. The evidence relied upon to show that the drainage poisoned the water, while it disclosed an increase in the deaths from typhoid fever in St. Louis, left it doubtful whether the typhoid bacillus could or did survive the journey and reach the intake of St. Louis in the Mississippi river; also showed other possible sources of infection in the discharge of sewage above the St. Louis intake from other towns and cities, some of which were situated in Missouri.

14. *Divorce Proceedings Against Non-resident.* A case which seems to have caused more general anxiety and mental unrest than any case recently passed upon is that of *Haddock v. Haddock*, 26 Sup. Ct. 525. A majority of the court there declared that the fact that one party to a marriage has a domicile within a State does not give the courts of that State jurisdiction to render a decree of divorce enforceable in all the other States, where the non-resident did not appear and was only constructively served with notice of the pendency of the action. It is, of course, obvious that the effect of this holding is very far-reaching, and that it is fraught with rather serious consequences to a great many who have hitherto regarded their marital ties as being legally dissolved. Justices Holmes, Harlan, Brewer, and Brown dissented.

A survey of recent legislation leads, with most commentators, to a lament over its faults and deficiencies, and to the utterance of a note of warning, over the evils that loom up as sure to come, unless its present tendencies are checked. It has been the custom of writers, both those of our own profession and those who were students of politics, to dwell so exclusively upon the short-comings and failings of our system of legislation that they have lost sight of much there is in it that is useful and good. The defects are palpable. They are, chiefly, over-legislation. Not only in the endless multiplication of laws, until what all are assumed to know no one actually knows;

but, also, in the excessive extension of State Supervision, transferring to the government that which can better be done by private agency; in controlling individual action; in meddlesome legislation; in class legislation, calculated to favor idleness and incapacity at the expense of industry and ability, and in most of that which goes under the vague appellation of Socialism.

It is also urged against our legislation—and truly—that it is hasty legislation, not properly considered, and is the offspring of that school of politicians who never look beyond proximate causes and effects; that it is framed to meet the supposed needs of the hour, without any comprehensive view as to the ultimate effects, and is rude and unscientific. Most of our bad laws will be found to fall under one or the other of these two divisions. Great complaint is also brought against our legislation, based on the charge that it is dictated by party management, the result of mere puppet action, controlled by known but unseen wires, but this influence seldom affects the character of our general laws. It is directed rather toward the confirmation of appointments, the making of appropriations, creating useless offices or the distribution of public revenue so as best to strengthen party supremacy.

Obedience to that opinion is the condition upon which the party-leader holds his place.

Hence, so far as interference by the political manager goes, legislation, as respects general laws, almost invariably reflects correctly what the prevailing party as a whole unmistakably demands, or if the demand comes from the whole community, irrespective of party, none are more careful to comply with that demand than those whose retention of place depends, ultimately, upon the voters at the polls. The public therefore remain responsible for the character of our general laws which still reflect the wishes and opinions of the majority, without

any effective interference from the mere political manager.

The sinister influence of the political "boss"—so called—is still, however, a controlling force in the selection of candidates, and hence a tendency towards the enactment of primary laws, and as against the other evils of the multiplication of laws and hasty legislation, the expedient of biennial and in some instances quadrennial sessions, and the extension of the referendum as a check upon the Legislature, have been adopted as the most effective remedies. All of these means for the repression of manifest evils are, to a greater or less extent, effective. And our own effort in Alabama with quadrennial sessions, should be given a fair trial.

But the real causes of those characteristics which we blame in our laws lie beyond the reach of such artificial modes of correction.

They are found in our own natural character and in the stage of social development we have reached. We feel, in a form modified by the peculiarities of our situation and circumstances, the influence of a wave of so-called socialism that is passing over the civilized world.

It is absolutely inevitable that it should find expression in our laws, because the laws reflect the prevailing convictions and desires of the communities to which they apply. Nor is this fact due to any preponderating influence of the ignorant and uneducated, directly or indirectly, upon our law-makers. The spirit of socialism is one that is created and fostered as much or more, from above as below. It springs, primarily, from the enlargement of the sympathies, the increased desire to relieve suffering and want, the benevolence, the altruistic spirit that evolution and modern conditions have developed among the ever increasing class of the well-to-do, in an age of increasing wealth and prosperity.

The exponents of the extreme doctrines of socialism

are found, not among toiling masses, but among authors and students and theorists. The preachers of the doctrine of discontent may be met among the educated, the intelligent and well-intentioned, quite as often as among the self-seekers and the demagogues. Hence the laws that unduly extend the power of the State; that viciously restrict individual action; that meddle only to mar, are quite as often the result of educated as of uneducated ignorance.

The class-legislation that is intended to control supposed privileges, but which, actually, confers more oppressive privileges upon the class it seeks to relieve, takes its origin less frequently from the direct efforts of those who are expected to benefit by it, than from the zeal of others who have persuaded themselves that the withholding of the supposed benefit is the withholding of a right.

We must accept the fact, then, that if our laws are mistaken, or defective, or unwise in some of their conspicuous general tendencies, it is because public opinion, formed by discussion, made up of a thousand influences and counter influences, is itself at fault in dealing with the problems it has to solve; it is because the resultant that determines its drift tends to give it wrong direction, and we must look only to the gradual change which continued discussion and experience, the great silent teacher, will bring about, to correct its cause and avoid the evils of which we are now conscious and against which we sound a warning. And as to the complaint against our legislation that it is made to meet present needs with too little appreciation of all its consequences, that it is not framed on scientific principles or as the result of expert study; while it may be, and indeed is often defective; while it is the very object of this Association to correct and improve it in those respects in which our profession and experience enable us to speak with au-

thority, yet legislation to meet the mischief of today, to correct evil as it arises, is the very genius and spirit of the law-making of the English-speaking people. Blackstone's elementary rule of statutory interpretation recognizes this when it instructs us, first to consider the mischief and then the remedy which the law was intended to apply. It is the instinct of our blood, to which we largely owe the preservations of our institutions and our form of government, to deal with facts and not theories,—not to wander from the case at hand, to do the best we can for the present and not attempt to closely to anticipate the uncertainties of the future, and the result is our justification. This policy may lead to many errors, but under no system are errors, on the whole, more sure to be corrected. Too many laws are a bad thing, impracticable laws are a bad thing, mistaken and foolish laws are a bad thing. But when laws which for any of these reasons are bad, creep into our statute books, some become obsolete and are swept away by the periodic revision that necessity imposes, some are corrected by the same means and others are repealed or amended, when the occasion for so doing becomes apparent. Some have adduced as an example of the weakness and inadequacy of our legislative system, its alleged failure and helplessness in dealing with the intricate subject of taxation,—due, they contend, to the want of legislators properly instructed in the weighty business of legislation, and the absence of any serious inquiry into the real nature of the difficulty with the view of establishing legislation upon a more enlightened basis in accordance with the principles of human nature and the teaching of economic science.

But where are we to find a scientifically instructed body of legislators? It could not be composed of selected and accomplished theorists. They never agree in their writings: they would never agree in the work of practical

legislation. As it is, we have men who fairly represent the average sense of the community. They have the benefit of all the views that can be urged, scientific and unscientific. They deal as best they can, with the concrete problem of raising a yearly revenue. Experience teaches that some things are practicable and other are not, and out of numberless trials and numberless mistakes, the result is that what is just and practicable is ascertained, here one measure and there another which is productive of revenue without imposing unjust and unequal burdens, and I venture to affirm that, as a final result, the system of taxation, which is in the course of evolution and may be gathered from the laws of all our States, taken as a whole, with all its errors and all its deficiencies, is slowly advancing toward greater efficiency and better results, and promises to reach at last, a solution of that most difficult of all economic problems—the equitable collection of the revenues necessary to the support of the State. And what is true of this subject is true of others. Much of our legislation is already admirable. The noble provisions of education, the laws for the preservation of public health, the laws in the interest of decency and morality, those for the repression of crime and the reform of the criminal, for the relief of the helpless and the beneficent work of charity, form a body of legislative enactment worthy of the highest civilization and the mark of an enlightened people. It could not have emanated from legislators who as a whole, were not faithful, able and animated by genuine zeal for public good. There is nothing more injurious to the public service or a proper regard for the duties of citizenship than the constant and indiscriminate depreciation of those who, as legislators or in other capacities, hold public office.

It confounds the good with the bad. It ceases to be salutary criticism because just criticism is constantly

mingled with calumny. It discourages honesty and fidelity, because honesty and fidelity are not distinguished in the general condemnation, from dishonesty and corruption. And when there is much that is good in our laws, it is a perfect assurance that they can be made better, not by revolutionary methods—not by rashly tampering with the constitutions that are the foundations upon which our system of government rests, but of removing the particular evil that can be reached by statutory amendment, by improving what is practicable to improve, by confining ourselves to definite aims and narrow fields, and preserving in all efforts at reform, the conservatism that is the natural outgrowth of our professional habits and experience.

No right-feeling man or woman will deprecate the sentiments that hold corruption in abhorrence and exacts the highest standard of fidelity and rectitude from public servants.

The community that tolerates vice or evil of any kind, without a protest, is decadent; and the community that is satisfied with mediocrity, has to cease progress. But indignation at iniquity or impatience with ignorance and stupidity, should not habitually divert our attention from what is good and admirable. So much has been said and written by those interested in legislative reform, in condemnation of the workings of our legislative system, that it is just that the condemnation which is their due should be uttered in behalf both of our laws and our legislators. Our system of government and the administration of our laws may not be perfect, but under them a great people have enjoyed a degree of liberty, serenity and happiness that the world has never elsewhere seen since civilization began. We may labor, each according to his opportunity and ability, to make them better, but we do so without losing our belief in their excellency or our faith in their permanency. They embody the wisdom



of our fore-fathers, the experience of ages. We have prospered under them in the past, they have met the conditions of our wonderful growth, and as that growth expands in new directions, they will be found adequate to meet the conditions of the future.

“As it is our privilege to study and our desire to improve them, so it is our peculiar duty to inspire, by word and example, respect for our country's laws and an appreciation of the inestimable blessing of our country's government.”

THE RATIONALE OF INTERFERENCE BY INJUNCTION WITH CRIMINAL PROSECUTIONS UNDER VOID MUNICIPAL ORDINANCES.

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BY DANIEL PARTRIDGE, JR.

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As a generalization it may be said without fear of contradiction that the ground of equity jurisdiction in all cases is the want of an adequate remedy at law. (16 Cyc. 30 & 31.) And in the matter of Injunction the ground of interference has never been reduced to a more specific rule than the original foundation of equity. This adequacy or inadequacy is the test of jurisdiction.

(*Lyon v. Hunt*, 11 Ala. 295; *Wilson v. Meyer*, 39 So. 317; *Barthet v. New Orleans*, 24 Fed. 563; *Arthur v. Oakes*, 63 Fed. 329; *Osborn v. U. S. Bank*, 9 Wheaton 738; *Pomeroy*, Sec. 1338; *Story*, Sec. 959.)

As Judge Story says:

“ \* \* \* courts of equity constantly decline to lay down any rule which shall limit their power and discretion as to the particular cases in which injunctions will be granted or withheld.” “And,” he adds, “there is wisdom in this course, for it is impossible to foresee all the exigencies of society which may require their aid and assistance to protect rights or redress wrongs. The jurisdiction of these courts, thus operating by special injunctions, is manifestly indispensable for the purpose of social justice in a great variety of cases, and therefore should be fostered and upheld by a steady confidence.” (Sec. 959.)

The word “Remedy” means the being put in possession of that right whereof the party injured is deprived. (*Cohens v. Virginia*, 6 Wheaton 407.) Obviously, this

definition includes an invasion of a right possessed by an individual; and a tribunal to vindicate that right. In the case of a prosecution for an alleged violation of a void municipal ordinance the question whether there is an adequate remedy at law should involve a consideration of the right possessed by the person prosecuted; of the invasion thereof by the prosecution, and of the tribunal and the vindication it could afford to the person wronged.

Where a person is proceeded against by a criminal prosecution the criterion of interference by a court of equity, reasoning *a priori*, ought to be the want of an adequate remedy at law. If we exclude all injuries to his property as consequent upon a criminal prosecution, all that is left to be infringed is the mere personal liberty of the citizen; if this is all that is impaired a vindication will be full and complete in the criminal court. The right which he lost temporarily is personal liberty—the right which is restored to him, whether upon writ of habeas corpus, or by successful defense in the prosecution itself, is the same. An interference with a criminal prosecution which threatened no more than the personal liberty of the citizen merely because the law is void will violate this fundamental criterion of equitable jurisdiction, and draw to the court of chancery the entire criminal jurisdiction. For, if a criminal prosecution must be interfered with merely because the supposed law is void—the liberty of the citizen being the right to be protected—then as logically should equity interpose between an innocent person and a valid law. That there is no substantial difference in the injuries resulting to the person proceeded against is declared by *City Council of Montgomery v. Louisville and Nashville Railroad Company*, 84 Ala. 127, 4 So. 626, where injunction was granted because the act of the person did not, as a matter of fact, come within the ordinance for the violation of which the prosecutions were threatened. And also in *Brown v. Birmingham*, 140 Ala.

590, 599, 37 So. 173, Chief Justice McClellan there saying: "Criminal and quasi criminal causes cannot in our system of jurisprudence be tried and determined upon such bills any more where the party proceeded against is innocent for that no statute or law denounces his act as a crime than where he in fact has not committed the criminal act charged, or, indeed, where he has in fact committed the criminal act denounced."

But no criminal case can be imagined in which the guilt of the accused must not be established by an exclusion of his innocence upon both hypotheses. To avoid therefore an usurpation of the entire criminal jurisdiction, and thus destroy the criterion, it is necessary to apply to these cases the general rule of the equity courts which limits their activity to rights of property. It is accordingly universally held that the right for the protection of which injunction may be invoked against a criminal prosecution must be a right of property.

(*Brown v. Birmingham*, *supra*; *Port of Mobile v. Railroad Company*, 84 Ala. 115; *Moses v. Mayor, etc., of Mobile*, 52 Ala. 198; *Ex Parte Sawyer*, 124 U. S. 200, where the cases are cited and discussed. This last cited case has been much relied on to prove that a court of equity will never enjoin a criminal prosecution, under any circumstances, but it is expressly said in that case that no right of property is threatened.)

In *Port of Mobile v. L. & N. R. R. Co.*, *supra*, the Supreme Court of Alabama declare that a court of equity will interfere with a threatened destruction of property rights by a municipal corporation, acting without its charter powers and in violation of its contract, where the illegal acts will work irreparable injury; and that a municipal corporation cannot escape the grasp of such court by the device of adding a penalty to a void ordinance for its enforcement. In *Brown v. Birmingham*, *supra*, on the other hand, the same court said: "there

are, it is true, some so called exceptions to the general rule we have stated—that is, there are some cases in which prosecutions for alleged violations of municipal ordinances may be enjoined; \* \* \* Illustrative cases are: \* \* \* those in which prosecutions under a void ordinance will destroy or impair *property rights*, to the irreparable injury of the owner.” The most obvious but least satisfactory differentiation of the two decisions would turn on the difference in the ownership and creation of the respective businesses sought to be protected. Most obvious, for the reason that it requires no thought to say one was a property right, in the sense Judge McClellan used the words, because it was a franchise owned by a corporation; while within the same sense the other was not a property right entitled to protection by injunction because it was a business owned by a private natural person. Least satisfactory, in that it only disposes of those two cases, leaving unreconciled many other decisions from other courts, State and Federal, some granting and some denying the writ against criminal prosecutions. It also is opposed to common knowledge: every man knows that the private business of an individual may be exceedingly valuable, exceedingly easy of destruction: yet impossible to value or to replace in money or other equivalent when destroyed. In view of the fact that every enunciation by the courts is as well a precedent as a determination, a theory should not only be reasonable, but also so comprehensive if possible as to conform to all the decisions, and looking into the future to provide for conditions yet to be. Indeed, partiality in this respect is the surest test of error.

The above suggested distinction would necessarily involve in the case of injunctions, if an exhaustive treatment of the subject were desired, an analysis of the jurisdiction into classes of property, divided by the lines between different species or kinds of property according to

their supposed comparative preciousness: e. g., into patents, franchises, corporate privileges, mining property, easements, etc., etc., with a line drawn somewhere between those rights which will, and those rights which will not, be protected. And as it is a general rule which is sought—one scientific and exhaustive, applying to all cases and affording a criterion—this analysis in its turn would prevent a court of equity from administering any relief where the right affected did not fall within one of the designated classes or species of property marked with the favor of the forum. But unless these species had all been mentioned or determined—or the characteristics of them sufficiently indicated—in the first case of injunction the same theory would deny the expansiveness of the remedy commended by Judge Story, which has been going on ever since Equity has been worthy the name. Thus no protection in the past could logically have been afforded to new kinds of property, because at each remove the above supposed classification would have excluded the remedy by reason of the newness of the right.

But the decision in *Port of Mobile v. Railroad Company* was not rested on the narrow ground that a corporate franchise is peculiarly the ward of chancery *merely because it is a franchise*, but *because it belongs to that class of property the value of which is inestimable by a pecuniary standard*; and also for sundry other reasons, as shall be presently shown. "The jurisdiction of a court of equity to protect a franchise of this kind from unlawful invasion or disturbance is clearly settled, and has been often recognized by this court as benign and salutary. The value of such a right, or the cost of its unlawful disturbance, cannot be reduced to a pecuniary measure. \* \* \* The ground of its exercise is usually the prevention of irreparable injury, or such as cannot be adequately estimated in damages at law; at other times, the avoidance of a multiplicity of suits, and again the

abatement of annoyance in the nature of a nuisance. Another controlling reason for interference by equity in such cases is that the public at large have an interest in the protection of such a privilege as well as the parties particularly interested." The court further on quote from Story, Sec. 928, "Formerly indeed they (courts of equity) were extremely reluctant to interfere at all, even in regard to repeated trespasses. But now there is not the slightest hesitation if the acts done or threatened to be done to the property would be ruinous or irreparable, or would impair the just enjoyment of the property in the future." (*Port of Mobile v. L. & N. R. Co.*, 84 Ala. 115, 123, 124.)

Observe: the court state the reason for interference to be that a franchise belongs to a class of property the enjoyment of which cannot be measured by a pecuniary standard sufficiently certain to afford protection by the ordinary legal remedies, and that when property of this kind is threatened equity interferes; citing 2 Story, 928, in which the author was not speaking of a franchise, but of all kinds of property whatever. In most of the cases cited by Judge Somerville the rights protected were not franchises, but they did belong to the class indicated. Thus in *Jerome v. Ross*, 7 Johns. Chan. 315, the discussion is of trespasses affecting (1) a coal mine; (2) water rights; (3) timber on land; (4) stones of peculiar value; (5) stones from a quarry—but not a franchise. After a full discussion the New York Court concluded: "I do not know of a single case in which an injunction has been granted to restrain a trespasser, *merely because he was a trespasser*, without showing that the property itself was of peculiar value, and could not well admit of due recompense, and would be destroyed by repeated acts of trespass."

In *Lyon v. Hunt*, 11 Ala. 295, the property was not a franchise, but land; and the wrong was waste. The court

did not say that the fact of the land being land, or the act waste, is the basis of the jurisdiction, but:

"The interposition by way of injunction in cases of waste, may be referred to the broadest principles of social justice. It is exerted where the remedy at law is imperfect, or is wholly denied; where the nature of the injury is such, that a preventive remedy is indispensable, and should be permanent. \* \* \* But it is said not to be the general rule that an injunction will lie in a naked case of trespass, where there is a legal remedy for the intrusion. There must be something particular in the case, so as to bring the injury under the head of quieting the possession, or to make out a case of irreparable mischief, or where the value of the inheritance is put in jeopardy."

. In *Scudder v. Trenton, etc., Co.*, 23 Am. Dec. 756, the right to be protected was not a franchise, owned by a corporation, but trees along a river bank. Speaking of injunctions against trespasses the court said: "The late cases have so construed this power as to embrace trespasses of a continuous or extraordinary character: *Eden of Injunctions* 139; *Stevens v. Beekman*, 1 Johns. Chan. 318; and they have gone upon the ground that the property to be protected was of peculiar value, for the injury or destruction of which a recompense in damages could not be made."

In *Poindexter v. Henderson*, 12 Am. Dec. 550, the injunction was to stay waste on realty, and was denied because of a dispute in the title.

*Burnley v. Cooke*, 13 Texas 586, 65 Am. Dec. 79, was an action to restrain the defendants from laying out a town on plaintiff's land, the irreparable mischief being in the damage to the value of the adjacent town lots which plaintiff had theretofore laid off on other land belonging to him, and was attempting to sell.

*White v. Flannagan*, 1 Md. 525, 54 Am. Dec. 668, was



an injunction against erection of obstructions in street. No franchise involved. It was there said: "It is contended on the part of defendants, that even if the complainant be entitled to use the street in passing to and from his lot and wharf, yet he has mistaken his remedy in invoking the extraordinary forms of a court of equity, and that he should have sought redress, if entitled to any, at law, which is capable of giving him complete and adequate relief. \* \* \* In the case of *Jerome v. Ross*, Chancellor Kent very fully reviews the course of the decisions in England and in the State of New York, and as we understand his opinion, recognizes the following principles: 1. That an injunction will not be granted to restrain a trespasser merely because he is a trespasser. 2. But that an injunction will issue where the injury is irreparable; or where full and adequate relief cannot be granted at law; or, where the trespass goes to the destruction of the property as it has been held and enjoyed; or where it is necessary to prevent multiplicity of suits in cases where the right is controverted by numerous persons, each standing in his own pretensions."

The last case cited by Judge Somerville is the great leading case of *Osborne v. United States Bank*, 9 Wheaton 738, and is the only case cited by the Judge where a corporate franchise was protected or even remotely affected. Says Chief Justice Marshall: "The appellants admit that injunctions are often awarded for the protection of parties in the enjoyment of a franchise; but deny that one has ever been granted in such a case as this. But although the precise case may never have occurred, if the same principle applies the same remedy ought to be afforded."

By the above review of the cases cited we see that to prove that a court of equity will protect a corporate franchise Judge Somerville has jumbled together cases involving all kinds of property rights. Had he thought

FRANCHISE "a sesame to open the gates of equity jurisdiction," simply because it was a franchise and belonged to a corporation, that it stood apart to itself, more favored per se than other property rights, he had hardly cited cases where injunctive relief was given to other kinds of property—less favored—without explaining the connection. So far was he from supposing any one would draw such a conclusion that he passes in discussion from a franchise to property in general, and back again to the franchise in a way which shows he was applying a criterion to a particular right. In the paragraph of his opinion numbered 5 (on page 123) he speaks of a franchise itself, as a property right to be protected; in paragraph numbered 6 (pp. 123 and 124) he is speaking of all property which can be trespassed on, of which a franchise is only one example, for he says: "A court of equity will not, it is true, interfere to enjoin a mere trespass of an ordinary character, either upon the person or property." And so he goes on to discuss the law of injunctions as applied to trespasses generally, and concludes: "And this view is now supported by an unbroken array of authorities, speaking with one voice on the subject." He then cites the cases above discussed. After which, without being at the trouble to state the likeness, he again speaks of trespass to a franchise. He thus broadens the scope of inquiry from a member to a class, narrowing back to the member, applying the same rule to both.

It would seem from the opinion of Chief Justice Marshall, quoted from above, that the case was one of first impression (not on the constitutional question alone), or else the Chief Justice did not consider it necessary to cite authorities: as from the premises admitted by counsel the conclusion drawn "flowed on with an irresistible certainty" (Mr. Justice Story's Eulogy.) And he does not place a corporate franchise in any condition of "splendid isolation," but classes it with property which is

threatened by "waste, \* \* \* some cases of trespass, and many cases of destruction. \* \* \*"

The want of criminal jurisdiction by a court of equity—and the full powers possessed by the law courts, civil and criminal—being the reason for non-interference as well with threatened criminal acts as with threatened criminal prosecutions, and the involvement of a property right in irreparable injury, or in a multiplicity of suits, being the pivot of activity, a consideration of some of the cases in which a court of equity has enjoined a person or persons from doing an act constituting a crime if committed, because a right of property has been threatened, will indicate what chancery considers such a right of property as merits its aid.

In *David v. Zimmerman*, 36 N. Y. Supp. 303, 91 Hun 489, the property was a business of manufacturing hats and caps, owned by a private individual. The acts by which the property was threatened constituted a criminal conspiracy. The court say: "Protection to property is guaranteed by the Constitution of the United States and the State of New York, and it is the duty of the courts to enforce these guaranties. The business of a person, conducted according to law, is a property right. \* \* \* (After discussing the consideration that the perpetrators of the outrage were insolvent.) Besides this the damages which arise from the destruction of a business, with a loss of contracts, cannot be ascertained even approximately. In such cases an injunction restraining the commission of such acts is the appropriate remedy."

In *Blindell v. Hagan*, 54 Fed. 40, and in *Elder v. Whitesides*, 72 Fed. 724, the act enjoined in each case was a criminal conspiracy indictable at common law: the right protected in each case was the prospective profit to be derived from a pending voyage by ship-owners. In the first case the Circuit Court for E. D. of La. said: "\* \* in cases of trespass, where the business is interrupted,

and the profits of pending enterprises and voyages are intercepted, the party injured must fail of recovering full compensation, for his damages must at law be largely conjectural; and for this reason as well as to prevent a multiplicity of suits, he may, by an injunction in equity, arrest the threatened wrong-doing, and prevent the consequent injury, which is irremediable, because it consists in the loss of profits, which are not susceptible of proof." In *Elder v. Whitesides*, the court cites the well known case of *Arthur v. Oakes*, 11 C. C. A., 63 Fed. 310, in which the right protected was a corporate franchise owned by a railroad, against a criminal conspiracy of the Brotherhood of Locomotive Engineers and others. The court did not consider it necessary to state that the right of a private person was as much entitled to protection as that of a corporation. In both *Blindell v. Hagan* and *Elder v. Whitesides*, the rights were owned by private persons—neither was a franchise.

In *Barr v. Essex Trades Council et al.*, (N. J. Eq.) 30 Atl. 881, the right protected was the good will of a newspaper, owned by an individual. The court there said: "A man's business is property. \* \* \* Mr. Barr's business of publishing the paper, with the incidents of its circulation and advertising, were as much his property as were the type and presses upon which the paper was published."

To the same effect and protecting the same kind of a property right, owned by an individual, from a criminal conspiracy to destroy it: *Casey v. Cin. Typ. Union* No. 3, 45 Fed. 135.

And furniture manufactory owned by private individual against criminal conspiracy: *Vegelahn v. Gunter*, 167 Mass. 92.

And business of milling and manufacturing cereal products, owned by private individuals: against criminal

conspiracy: *Beck v. Ry. Teamsters' Pro. Assn.*, 112 Mich. 497, 42 L. R. A. 407, 77 N. W. 13.

In *Jones v. Oemler*, 110 Ga. 202, 35 S. E. 375, oyster beds, the property of a private natural person, were protected from criminal trespasses by financially irresponsible, numerous, oyster gatherers.

We also find that criminal prosecutions under void ordinances have been enjoined to protect rights of property owned by private natural persons. Thus in *Hughes v. Recorder's Court*, 75 Mich. 574, 13 Am. St. Rep. 475, the right of a market gardener to sell fruits and vegetables of his own raising to consumers in the public markets of Detroit was protected by injunction, the court saying that it would be vexatious in so clear a case, where delay would destroy the season's business, to turn the complainant over to the vexatious and persecuting criminal prosecutions which it is evident the city officials were disposed to set in motion.

In *Barthet v. New Orleans*, 24 Fed. 563, the business of a butcher, owned by a private person, one Barthet, was protected.

In *City of Hutchinson v. Beckham*, 118 Fed. 399, (C. C. A., 8th Circuit), the right protected was the business of wholesale and retail jobbing of groceries, owned by private natural persons.

In *Dobbins v. Los Angeles*, 195 U. S. 223, 45 L. C. P. Ed. 169, the complainant, Carrie W. Dobbins, on the faith of an existing ordinance defining the territory within which gas works might be erected, entered into a contract with a construction company to erect for her gas works, and thereafter purchased land within the designated limits. After the foundation of her works were laid at considerable expense, and while the work was progressing, the city passed another ordinance, capriciously changing the territory so as to leave her works within prohibited ground. The Supreme Court of the United

States, reversing the Supreme Court of California, sustained an injunction to protect her business from the effects of the criminal prosecutions which the city authorities were preparing to institute against the workmen of the construction company.

In each of these cases, not only was the ownership in a private natural person, or persons, but the right protected was not a franchise; nor did it depend, mediately or immediately, on a legislative grant.

Was the injunction in *Brown v. Birmingham* denied because Brown was a natural person and his business no franchise? Why does the court declare that no right of property is threatened? The allegations of Brown's bill show that he was conducting a place where telegraphic reports of sporting events were received from a distance and communicated to the citizens of Birmingham. The legislative department of Birmingham passed an ordinance prohibiting such places, and the bill avers that the executive officers of Birmingham were about to enforce the ordinance by arresting Brown, which would involve irreparable injury to his business (although no facts are averred to show that this is true), and that no damages could be recovered against the defendant for such loss. These allegations, and others, in the bill show that there was a bona fide, real and most serious doubt of the legality and morality of complainant's business, and that the legislative and executive officers of the city honestly disputed its lawfulness, under the idea that it encouraged gaming or gambling. These authorities have implied and express authority (See charter of Birmingham, Sec. 20, (6) Acts 1882-3, p. 311) to prohibit gambling houses \* \* \* and all games and sports of an immoral character; and so were acting within the apparent scope of their authority, and in perfect good faith. In the *Mobile* case, on the other hand, the city authorities were taking advantage of a power granted them for the public weal

to abrogate one of their solemn contracts, under which the complainant had acquired property rights; and the act therefore was not only ultra vires, but in exceeding bad faith. Here then we have the application of the well known rule that the complainant's right must be free from doubt resolved against Brown, because the bill—in which he is presumed to state his case as favorably for himself and as unfavorably to the city as is possible,—showed a doubt of his right: while the complainant in the Mobile case clearly showed its right beyond dispute; and the application also of another principle in the Brown case of *damnum abseque injuria*. For the court elsewhere say: "If he is not guilty of any offense, either because the act charged is not an offense, or because he has not committed the act, those tribunals (i. e., the law courts) will acquit him and there is an end of it. In either case, whatever damages he in fact sustains from the prosecution are those only to which all citizens must submit in the first instance, looking to the courts of common law for compensation for the malicious wrongs of the prosecutors." Then follows an extended discussion of the question in which the meaning of "multiplicity of suits" is involved, and the two exceptions to the general rule are stated. The Chief Justice then says: "The present is obviously not within the first two of these categories. That it is not within the last (i. e., where rights of property are irreparably injured), but to the contrary is covered by the decisions of this court against the equity of such bills in *Burnett v. Craig*, supra; *Moses and Beebe v. Mobile*, supra; and *Forcheimer v. Mobile*, 84 Ala. 126, is demonstrated by and in effect declared in *Mobile v. Louisville & Nashville Railroad Co.*, 84 Ala. 115, 126." Here the Chief Justice has first laid down the rule that all citizens must submit their personal liberty and their property, of whatever kind, to bona fide prosecutions, looking in the first instance to the courts of common law

for release and compensation: this is an inconvenience considered necessary to the due administration of justice. Leaving out of consideration for the present that no damages to property are shown, the conclusion to be drawn is that no right of property is violated by this inconvenience, because rights of property of all kinds are subordinate to a bona fide exercise of the police power. This bona fide exercise of that power by a municipal corporation, as an agent of the State, is a perfectly legal and proper use of its own, and any injury suffered therefrom by a citizen is *damnum abseque injuria*. (Birmingham Trac. Co. v. So. Bell Tel. Co., 119 Ala. 129, 24 So. 731; Davis v. Am. Soc. etc., 75 N. Y. 362.) Further than this the court declare that the arrests threatened will not involve more than trespasses to Brown's person. In other words the allegations in the bill of irreparable injury are not supported by a state of facts showing how the arrest of Brown will inflict irreparable injury on his business. (See Burnett v. Craig, 30 Ala., and other cases cited by Judge McClellan in support of this conclusion.)

There is nothing in Forcheimer v. Mobile adverse to the above differentiation. In that case the right of property aimed at and which it was the purpose of the city authorities to destroy was—not Forcheimer's, but—the business of one not a party to that suit, the Railroad Company. It was not shown that the enforcement of the ordinance would work irreparable injury to Forcheimer. The case is an authority to the effect that had he possessed a direct interest in the franchise he had been entitled to protection, provided he had shown irreparable injury, for the court as a reason for refusing the injunction not only exclude the fact that he possessed a franchise, but also that there was any irreparable injury shown to complainant.

In the case of Burnett v. Craig, 30 Ala., there was no averment that irreparable injury would be the result of



the prosecutions: the case was simply an attempt to enjoin a personal trespass.

In *Moses & Beebe v. Mobile*, 52 Ala., the right sought to be protected was a franchise, and the court refused relief. The ground on which the relief was refused was that there was a doubt of the constitutionality of the statute under which the franchise was claimed. This case is besides an authority that a court of equity will not protect a franchise any more readily than any other property unless irreparable injury is shown.

In *Montgomery & W. P. R. R. Co. v. Walton*, 14 Ala. 207, the attempt was to secure an injunction against personal trespasses to agents of complainant railroad company, constructing its road over the land formerly belonging to respondent, but which the company had duly condemned. The court refused to protect a franchise in this case, because the acts to be enjoined were merely personal trespasses.

These are the cases which Judge McClellan cites to support his statement that the acts sought to be enjoined in the *Brown* case were no more than personal trespasses: they and the parts of the decision which have been quoted above show that the relief in the last named case was not denied because *Brown* was not a corporation and had no franchise; while on the other hand the cases from other States and from the Federal Courts discussed show that all species of property have been the subject of protection when assailed by illegal acts, whether connected with the law of crimes or not, where irreparable injury was threatened.

In view of these decisions and of the declarations of Judge Story, quoted in the first part of this paper, the only division of the subject in respect of property rights which will fulfill the expansiveness of the jurisdiction is into two classes: (1) Where the property to be protected is intrinsically such that as a matter of law any wrong-

ful interference with it, whether it be trespass or not, will inflict irreparable injury. In cases of this kind, we will say, no peculiar circumstances are needed to invoke the remedy; and (2) those cases where the character of the property is such that *prima facie* a destruction or impairment of it will not presume a case for an injunction, but there must be some peculiar circumstance in the case, either in the use to which the property is put, in the nature of the wrong to be inflicted, or in the irresponsibility or immunity of the persons who purpose to inflict it, to overcome the *prima facie* presumption that there is an adequate remedy at law.

We have seen that a court of equity avoids interference with the business of the criminal and civil law courts if possible. As a corollary of the above, the rule is laid down that a complainant seeking injunction must show a clear right, beyond dispute, or settle it first in a court of law. If the mere assertion of a right sufficed to invoke the jurisdiction, then every criminal case might be brought to the attention of a court of equity by injunction—if grievous injury were shown, although after the case had been fought out in the court of equity it should develop that the injunction must fail, either because the property of the complainant was not the property destroyed. In the inception of the case, therefore, the court will examine the asserted right, and if it is doubtful refuse to interfere, in order that an illusory title or right may not be made the stumbling block of justice. We see this principle applied in *Moses & Beebe v. Mobile*, 52 Ala. 198, where the injunction was refused because there was a reasonable doubt whether the act under which the franchise was claimed was constitutional, and therefore because it required a settlement of a law court. Also in *Brown v. Birmingham*, as shown above, and it is submitted that the case of *Montgomery v. West*, 40 So. 215, presents a case where the right is not free from

erty of the complainant, nor suits for damages compensate for its loss, it is fatuous. It is fatuous because the whole train of argument, on such an application, would depend on the assumption that in all suits of the kind there must be a dispute as to complainant's right: and that the act to be enjoined must always be a *pending* criminal prosecution. But inasmuch as there are cases where there can be no reasonable doubt of complainant's right; as a court of equity will never interfere unless the right to the injunction is free from doubt, and as criminal prosecutions, like all human acts, must have a beginning, and therefore a time when they are not yet begun, but only threatened, the premises are false.

The case of *Poyer v. Village of Des Plaines*, 123 Ills. 111, 13 N. E. 819, 5 Am. St. Rep. 494, is another illustration. In that case one of the reasons for denying the remedy was that the right of complainant was in doubt. The city had passed an ordinance prohibiting picnic grounds, and part of the ordinance was conceded by the complainant to be valid and part attacked for invalidity. The court say, admitting for purpose of argument that the part impugned is invalid, the complainant failed to show whether he was being proceeded against under the void or the valid part: they could not therefore say that he was not being prosecuted for an infraction of the valid portion, which was separable from the supposed invalid part. He must then first settle his right in a court of law.

In the often cited case of *West v. Mayor, etc.*, 10 Paige 539, the complainant's right was in doubt. The court there say: "In the present case the complainant's bill does not show that they have established their right at law; but on the contrary it is distinctly stated in the bill that in some of the suits which have been commenced the decision has been adverse to the complainants, and that the other suits have not yet been decided."

Enough has been quoted to show that the right must

assume jurisdiction of the cases, the Chancellor, sitting without a jury, would have to hear and determine all issues. And for what and with what result? \* \* \*

\* \* \* It is obvious that, if this court once assumed this jurisdiction, it would speedily draw to itself the supervision and control of all the criminal prosecutions in the State growing out of the traffic in liquor; for it is quite certain, if the court once enters upon this business, that every vendor of liquor in the State will claim to be a dealer in original packages only, and whenever a prosecution is commenced against him he will at once seek the shelter and protection of an injunction from this court. And the extraordinary spectacle would be presented of a United States Court of Chancery having its whole time taken up in keeping watch and ward over the saloons in the State, protecting the proprietors and their clerks from prosecutions, until it should be first shown by the State to the satisfaction of the Chancellor that the State law had been violated, when the Chancellor would make an order granting the State leave to prosecute for that violation." Elsewhere the court say another reason why the Chancery Court cannot take jurisdiction is because they cannot punish the complainant if at the end of the chancery suit it should turn out he is in fact guilty; in which case, they say, the case would have to go back to the criminal court whence it came.

This reasoning is very cogent if it is limited to a case where complainant's right is doubtful, or is not beyond peradventure, and to criminal prosecutions already pending; but when it is directed to any interference whatever by courts of chancery with threatened prosecutions—not yet instituted;—when there can be no doubt that those prosecutions if stated must fail, and when as in the case of *Port of Mobile v. L. & N. R. Co.*, and the other cases above discussed, the determination of the guiltlessness of the person proceeded against will not restore the prop-

erty of the complainant, nor suits for damages compensate for its loss, it is fatuous. It is fatuous because the whole train of argument, on such an application, would depend on the assumption that in all suits of the kind there must be a dispute as to complainant's right: and that the act to be enjoined must always be a *pending* criminal prosecution. But inasmuch as there are cases where there can be no reasonable doubt of complainant's right; as a court of equity will never interfere unless the right to the injunction is free from doubt, and as criminal prosecutions, like all human acts, must have a beginning, and therefore a time when they are not yet begun, but only threatened, the premises are false.

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Enough has been quoted to show that the right must

be free from doubt or dispute. It behooves to inquire what this freedom from doubt or dispute means.

In the case of *West v. Mayor*, *supra*, it was said that a complainant must first settle his right in a court of law.

In *Moses v. Mobile*, 52 Ala. 198, *supra*, the court say: "A court of equity frequently intervenes when the courts of law cannot afford adequate remedies to protect the violation of franchises, or special privileges granted by the legislative authority of the State. A difference observed in cases of this character, and where mere private rights, nor originating in express legislative grant, or dependent on special legislative enactment, are involved is, that the owner of the franchise or privilege is not compelled to a suit at law for the establishment of his right, as a condition precedent to equitable interposition. The legislative grant, or enactment, is regarded as equivalent to a judgment of a court of law declaring the right." (Citing *High on Injunctions*, 317, Sec. 571.) The author cited says: "The former tendency of the English Court of Chancery seems to have been to require the plaintiff to first establish his right at law, before relief by injunction would be granted for the protection of his franchise. But in this country the rule may now be regarded as well established that to warrant the interposition of equity for the protection of the franchise it is not necessary that the owner of the franchise should have first established his right by action at law. The legislative power of the State having authority to grant the exclusive right which it is sought to protect, the granting of such right is regarded as equivalent to having established it at law." And elsewhere (Sec. 918 of Third Edition) the same author says: "As we have seen, in considering the general grounds of relief for the protection of franchises, it is not necessary that the right should have been first established at law to warrant a court of equity in extending relief by injunction, since the crea-

tion of the franchise by legislative grant in the first instance is regarded as sufficient assertion of the legal right." The author does not say "there is this difference between mere private rights and franchises," in that the one will never be protected until it has been first settled in a law court, while the other will. He is not considering private rights at all. The quotations are from a chapter devoted exclusively to franchises, and the text is only to the effect that formerly the English chancery courts would not protect a franchise until it had been settled in a law court; while now the American courts will not compel the owner of one to go to a court of law beforehand, in view of the fact that a legislative grant is the equivalent of having it established at law. Now all this may be true, and yet the American courts may take the same position in regard to a private right in a case where it is free from doubt. And as a matter of fact they do excuse the recourse to a court of law, even in the case of a private right, where it is free from doubt. (See *Belknap v. Belknap*, 2 Johns. Chan. 463, decided in 1817, and citing the English case of *Hush v. Tr. of Morden College*, 1 Vesey 188.) They go on the same theory they go on in excusing the establishment of a franchise: that is, it is a useless ceremony to settle what is already indisputable, because there is nothing to settle; and the very cause for relief in these cases is that the property will be destroyed while the other is having it settled in the law court. If he can afford to wait until his right is determined in the court of law, he does not need the injunction—it must be denied him because there is no irreparable injury shown. On the other hand, if he goes to a court of law and his right is settled, but in the meantime his property is destroyed, he will hardly return to the court of chancery for the barren triumph of having the court declare he had a right. It will be seen at once that no private right could ever be protected from irre-

parable injury, by injunction. If the court in *Moses and Beebe v. Mobile* meant that the legislative act was the same as a judgment they were peculiarly inconsistent; for no court of equity would go behind the judgment of a law court declaring such a right, and no municipal corporation would be allowed as respondent in equity, to dispute that which had been settled between it and complainant in a law court. It would be in favor of such complainant and against such respondent, *res adjudicata*. And yet the court in that case after gravely declaring they will give to a legislative grant the effect of a judgment at law, not only allow the respondent to dispute that right, but dismiss the bill because there is a doubt. The decision then amounts to this: a legislative grant is the equivalent of a judgment if the right without doubt is included within the terms of the grant, and if the statute is constitutional: but if not then the owner of the franchise must go to the court of law. In other words if the right is indisputable, it cannot be disputed. Let us examine this vaunted certainty of a right created by the legislature and see in what it consists. The courts say the matter cannot be disputed, because it is a matter of record. This argument begs the question on two points: first, that the grant is constitutional; second, that the statute under which the franchise is claimed is not obscure or involved or ambiguous, and clearly gives him the right which he is asking to have protected. For if the act is beyond the power of the legislature, because in contravention of the constitution, or if the right is not granted to the complainant, but a different right or none at all is conveyed, then he is not entitled to protection, because he has nothing to protect. More than this the very case in which this announcement is made is authority for the proposition that: "If the franchise or privilege is assailed as invalid, because of the unconstitutionality of the statute from which it is derived, and on



an inspection of the statute a reasonable doubt exists whether the legislature had the power to enact it, a court of equity would not interfere. It is only when the court, on an inspection of the statute, has no reasonable doubt of its constitutionality, that it will interpose, to prevent the invasion of the privilege it confers." Now it would seem that if the grant of the legislature is equivalent to a judgment a court of equity ought not to stop at a *doubt* of the constitutionality of the statute, but should accord to the grant the effect of a judgment by saying to the party attacking it: we regard this grant as an ascertainment of this right; and further than this we must presume, *prima facie*, that the legislature was acting within its powers: the burden is upon you to establish to our satisfaction that the act is unconstitutional. Instead, they say: this is regarded by us as an ascertainment by a court of law; but we will examine it, and if there is a reasonable doubt of it in our minds, we will ignore the settlement. It is but the statement of an apparentness that if a court of law had assumed to take jurisdiction of the cause and had declared the statute to be valid, the burden had been upon him attacking the validity of that statute in the injunction suit to show to the court that the proceeding in the law court was *coram non judice*. The fact that the legislature assumes to pass an act is equivalent to an assertion of its authority to pass it—we are now considering the comparison of an act of the legislature to a judgment of a law court, and if we are to compare the two we must consider the legislature a court of general jurisdiction, whose jurisdiction is *prima facie* presumed. And as a matter of fact when a statute is attacked, the presumption is in favor of its constitutionality, the courts never declaring it unconstitutional unless it contravenes clearly the organic law. If there is a substantial doubt, it is resolved in favor of the authority (i. e., in this connection, the jurisdiction) of the legisla-

ture. If these courts therefore reverse this presumption, and put upon a complainant the burden of proving beyond a reasonable doubt that which is elsewhere presumed in his favor—that the court which declared his right had jurisdiction of his particular case—logically they can do no less than put upon him also the burden of proving beyond a reasonable doubt that his franchise is involved in the grant. And this is exactly what they do: in every case where a person or corporation seeks protection of a franchise the court examines the grant and if there is a reasonable doubt, either that the legislature had authority to make, or that the right claimed was created by, the grant, the complainant is required to go to a court of law to first settle his right. A settlement no more certain than this is a very poor settlement. In reality the point of contention in most of the cases—in nearly all—is not in regard to the grant of the right to complainant, but is on the right of the city authorities to regulate the right. That very question was one considered in *Port of Mobile v. L. & N. R. Co.* supra, the court among other things saying: “The allegations of the bill, which the demurrer admits to be true, negative all facts from which it is possible to suppose that the purpose of the objectionable ordinance was to abate a nuisance. There is no sort of pretense that it was a mere police regulation. There is no complaint on the subject from those most interested in the use and occupancy of the highway. \* \* \* Facts moreover, are averred from which it seems clear that the loading and unloading of cars of freight by the railroad along the street, so far from seriously obstructing travel and traffic by the public, greatly facilitate the convenient use of the streets for these purposes, by relieving it of the burden of being constantly crowded with drays and other vehicles. The case, therefore, raises no question as to a resort to the police power of the city or State to abate an alleged nui-

sance, or as an attempted regulation of an admitted right." Nobody within reason will deny the undeniable: though from the strenuousness with which corporate franchises are attacked in many of these cases wherein they are sought to be protected, it would seem they are not so rarely beyond dispute. Nobody will deny the undeniable: but this applies as well to a private right as to a corporate franchise. Nobody ever denied the right of a corporation or person to exercise the privileges of a franchise which could not be denied: and no more nor less did any one ever deny the inherent right of a private person to enjoy his property. No municipal corporation has ever denied the right of a butcher to carry on his trade; of a grocer to sell his wares; of a barber to cut hair; of a laundryman to wash clothes; of a manufacturer to operate his factory. The right to carry on a useful and harmless occupation is so free from doubt that no one will deny it. It is just as free from doubt as that of a railroad company to carry on its business of loading cars in the streets of the city—more so, for the latter may depend upon very doubtful legislative grants: the former has now been forever placed beyond dispute by its inherent innocence and by the constitutions, State and Federal.

When we find municipal corporations attempting to destroy a property right, therefore, it is always under the guise of the Police Power; and there the right of the complainant is determined—not on his inherent right to do the thing which he asks to be allowed to do, but on the question whether the act of the municipality is regulation or confiscation. And inasmuch as that question depends on a variety of circumstances, such as the place where, time when and manner in which the business is carried on, a determination of it rests as much *en pais* in the case of a franchise as in the case of a private right invaded. In the *Mobile v. Railroad Company* case, had

the city put in an answer showing that the company was using the streets in effect for a warehouse, storing its merchandise there, and entirely blockading the streets, or in any other way creating and perpetuating a nuisance or abuse of the purpose for which the franchise was granted, would not the right of the complainant to the injunction have been immediately in doubt, by the very authority of the decision which declared its right?

The Supreme Court of the United States, in the case of *Dobbins v. Los Angeles*, 195 U. S. 223, 49 L. C. P. 169, protected a private right from interference by a municipality under the guise of illegal penal ordinances, without requiring the owner of the right to first settle it in a court of law. True, in this case the complainant had a permit from the fire commissioners of the city; but this was no more a grant nor a contract than a license to retail liquors would be, were the legislative branch of a municipality to pass prohibition laws after an executive committee had granted the license. Says Mr. Justice Day: "It may be admitted as being a correct statement of the law as held by the California Supreme Court that, notwithstanding the grant of the permit, and even after the erection of the works, the city might still, for the protection of the public health and safety, prohibit the further maintenance and continuance of such works, and the prosecution of the business originally harmless, may become, by reason of the manner of its prosecution or a changed condition of the community, a menace to public health and safety. In other words, the right to exercise the police power is a continuing one, and a business lawful today may, in the future, because of the changed situation, the growth of population, or other causes, become a menace to the public health and welfare, and be required to yield to the public good." The court then proceeded to consider the circumstances alleged in the bill to show that the ordinance attacked was passed for

the purpose of destroying complainant's property, and was void for the reason that it was not referable to a valid exercise of the police power. These circumstances rested entirely in parol, and consisted of an allegation of conspiracy between the council and the rival gas company, and of facts showing there was nothing in the surroundings and conditions of complainant's business justifying interference for public health or safety. The right of Mrs. Dobbins depended entirely on a decision by the court of equity whether or not the ordinance was a valid exercise of the police power; this question in turn depended on evidence not contained in nor affected by any legislative or other grant. But inasmuch as the ordinance was clearly void, the complainant's right was free from doubt.

*Cicero Lumber Co. v. Cicero*, (Illinois) 51 N. E. 758, is likewise in effect an authority in point; for though the right was owned by a corporation it was not a franchise, nor in the nature of one, nor dependent upon a legislative grant, being no more nor less than the right which all citizens possess to use the streets. Complainant was a lumber company, and used a certain public avenue in sending out its wagons to deliver lumber, just as all the other citizens used it. The city passed an ordinance prohibiting the use of this avenue by certain kinds of wagons, the wagons of complainant being within the prohibited class. The court enjoined the arrest of servants in charge of the wagons, on the ground of irreparable injury:—no settlement beforehand in a court of law.

In *Barthet v. New Orleans*, *supra*, the right protected was that of a butcher, and the case was somewhat similar in its facts to the Dobbins case, in that Barthet had put up his butcher shop and other houses for slaughtering beef in a territory permissive by the then existing ordinance, expending considerable money there. The city

arbitrarily changed the territory, excluding the ground on which Barthet was, and without requiring him to settle his right in a court of law, he was protected.

And no case can be found where irreparable injury was shown to be the inevitable result of the enforcement of a void ordinance, passed for the purpose alone of illegally destroying the property of a private individual, in which the court did not examine for itself the right to be protected, and reach the conclusion for itself, without the aid of a court of law, whether or not the right was doubtful; and if it was found that the right was free from doubt, did not interfere for its protection.

In *Brown v. Birmingham*, supra, Judge McClellan says: "Not only is it true in a legal sense that no damages, irreparable or otherwise, result to a defendant from a bona fide prosecution for an alleged crime, but it is also legally true that if he is innocent, etc." And in the other part of his opinion he says: "\* \* \* whatever damages he in fact sustains from the prosecutions are those only to which all citizens must submit, looking to the courts of common law for compensation for the malicious wrongs of the persecutors." And in *Birmingham Traction Co. v. So. Bell Telephone Co.*, 24 So. 731, 119 Ala. 144, Judge Haralson says: "\* \* \* whatever annoyance or injury may result to one person from the rightful and lawful use of his property—which implies no want of care for the rights and interests of others—it is *damnum absque injuria*."

From these expressions it would seem that an answer to the question of what is irreparable injury depends as well upon a consideration of whether or not the person or corporation who is doing the act is doing it lawfully in "the rightful and lawful use of his property," as upon the actual effect on the property sought to be protected. This rule has been announced in *First National Bank v.*

Tyson, 133 Ala. 459, 32 So. 144: "On the same subject Mr. Wood says, that by 'irreparable injury, is not meant such injury as is beyond possibility of repair, or beyond possibility of computation in damages, nor necessarily great injury or great damage; but that species of injury, whether great or small, that ought not to be submitted to on the one hand, or inflicted on the other, and which, because it is so large on the one hand, or small on the other, is of such constant and frequent occurrence that no fair or reasonable redress can be had therefor in a court of law.'"

Therefore, there must be and are two elements to irreparable injury: (1) the wrongful act; and, (2) the consequent injury incapable of computation. If there is wanting either of these elements there is no case of irreparable injury. For instance in the case of Traction Co. v. Telephone Co., *supra*, it is declared that when one corporation is using (not abusing) its corporate franchise, an injury to the corporate franchise of another company is regarded as an incident of the use. The rule *sic utere tuo ut alienam non laedas* does not apply to a use which is legal and proper. But that rule does apply to a municipal corporation as to any other person, as was decided in *Mayor v. Coleman*, 33 So. 13.

The two elements of irreparable injury will be considered in the order stated.

A municipal corporation possesses two well defined and different attitudes towards the persons within its territory. In one of these it is a governmental agency, carrying out the public social polity of the State: in the other it partakes of the characteristics and limitations of private corporations. As a vicarious possessor of that undefined fund of sovereignty called the police power, it is as immune to the control of the courts as its supreme grantor; in its merely corporate activity it is more or less

amendable to judicial control, in proportion as its acts are remote from or identical to its political functions. Accordingly we find in all the jurisdictions decisions on the one hand denying the power of the courts to interfere with municipal functions: on the other hand asserting that power, and granting its exercise to private and artificial persons for the protection of their property. Upon an examination of these cases it will be discovered that the line of departure in all of them is the boundary of what may be legitimately assumed to be an exercise of the police power; that beyond this limit a rule is applied in its full force which places these corporations on the same footing with—and liable to sue and be sued in the courts in all cases as are—private persons and corporations.

The rationale of this distinction depends on the conception of the police power, insofar as it is restrictive or destructive, as exhausted when the welfare of the community has been attained; and upon the necessity of preserving constitutional rights against illegal interference, under the specious guise of governmental activity, when it clearly appears that the pretended public function is in reality a private engine of destruction. We find this idea expressed in varying terms in the different decisions.

Thus in *Brown v. Birmingham* Judge McClellan refuses to consider the second element of irreparable injury, the consequent injury incapable of computation—he says it is beside the mark, and the term which expresses the dividing line in that case consists in the words: “*bona fide prosecutions.*”

In *Davis v. Am. Society, etc.*, 75 N. Y. 362, the court says that the ruin to character and property the results of a *bona fide* exercise of the police power, is *damnum absque injuria*.

In *Port of Mobile v. L. & N. R. Co.*, “It cannot be tole-



rated that a municipal corporation, in view of these principles, should escape the grasp of a court of chancery, in a clear case of equitable cognizance, by the device of adding a penalty to an illegal and void ordinance, which is designated as a repudiation of its own valid grants or contracts, \* \* \*

In *Dobbins v. Los Angeles*, *supra*, "The State has undoubtedly the power, by appropriate legislation, to protect the public morals, the public health, and the public safety; but if, by their necessary operation, its regulations looking to either of these ends amount to a denial to persons within its jurisdiction of the equal protection of the laws, they must be deemed unconstitutional and void. \* \* \*

This principle was recognized and applied in the Supreme Court of California in a case decided later than the one under consideration (*Re Smith*, decided May 31, 1904, 143 Cal. 368, 77 Pac. 180), in which it was held that a county ordinance making it a misdemeanor to maintain a gas works within a sparsely settled district was unreasonable and void. In that case the court, after again quoting from *Munn v. Illinois*, to the effect that the courts will not interfere with laws which are within the scope of legislative power, well said: 'But running current with this principle, and to be read with it, is one of equal importance,—namely, that when the police power is exerted to regulate a useful business or occupation the legislature is not the exclusive judge as to what is a reasonable and just restraint upon the constitutional right of the citizen to pursue any trade, business or vocation which in itself is recognized as innocent and useful to the community. It is always a judicial question if any particular regulation of such right is a valid exercise of the police power, though the authority of the courts to declare such regulation invalid will be exercised with the

utmost caution, and only when it is clear that the ordinance or law declared void passes the limits of the police power, and infringes upon rights guaranteed by the constitution.' ”

And in *Barthet v. New Orleans*, 24 Fed. 263: “This is not a case where the city may or will have an ultimate right to do the thing complained of as sometime happens when a city is attempting to do a thing lawful to be done but prematurely; \* \* \* but the city can never do the act complained of without violating Barthet’s constitutional rights.”

In *Atlanta v. Gate City Light Co.*, 71 Ga. 106: “Where it is manifest \* \* \* that a prosecution and arrest are threatened for an alleged violation of city ordinances, for the sole purpose of preventing the exercise of civil rights conferred directly by law, injunction is the proper remedy to prevent injury to the party thus menaced.”

In *Central Trust Co. v. City St. R. Co.*, 80 Fed. 225, Judge Showalter said: “\* \* \* it seems to be law that, when such prosecutions are threatened under color of an invalid statute for the purpose of compelling the relinquishment of a property right, the remedy in chancery is available.”

Prima facie, the arrest of a person—his detention for a time—does not show any substantial direct injury to his property, as the proximate consequence thereof, such as the courts notice—much less that an injury if caused by such arrest cannot be adequately remedied by a verdict for damages. On the face of it, such an arrest is no more than a personal trespass. We have seen that a court of equity never interferes except to protect property rights, and only then when the remedy at law by damages is inadequate. The rule then is that a mere allegation of threatened arrest of complainant or his servants is not enough to show an injury to property, nor

will the allegation of irreparable injury impart any equity: *facts* must be averred to show to the court that such will be the result of the alleged wrong about to be perpetrated. We find this rule plain enough in its conception, the reason of it obvious, but sometimes difficult in its application owing to varying circumstances. We also find it variously stated by the different judges, sometimes in the shape of a denial that equity interferes at all in these cases. But when the case is examined in which such dictum is asserted, it will be discovered that one or both—usually both—of the elements of irreparable injury are wanting—even in many of them that there is no attempt to aver irreparable injury—and that the categorical denial of the jurisdiction had reference to this condition; or sometimes the court is using the words irreparable injury not as words of technical terminology, but in the sense of grievous injury, such an one however as the person inflicting has a right to inflict. Thus in *Brown v. Birmingham*, Judge McClellan need not have rested with the assertion that the averment of irreparable injury was beside the mark. It was indeed beside the mark in that case, but also unsupported by facts. For one may well ask: How will the arrest of Brown and his agents and servants injure his business? And even if it injure his business, even if the business should be closed for a week or a month, how will irreparable injury be the result? Is there anything to show that a jury could not consider fully the damages incident to the closing and give full compensation therefor? But Judge McClellan was not using the term irreparable damage in a technical sense: he was using it in the sense of a great and grievous destruction of property, but which is *damnum absque injuria*. Bear in mind he says: "Not only is it true *in a legal sense*, that no damages irreparable or otherwise, result to a defendant from a bona fide prosecution for an

alleged crime," etc. (Here *he* is speaking of technical irreparable injury.) But above that he has said: "If the quasi criminal ordinance for violations of which the prosecutions are about to be instituted is a valid ordinance, the ascription of damages, however irreparable, is of course, not to the prosecution in any legal sense, but to the complainant's own voluntary and unlawful acts. Criminals have no standing anywhere to complain of detriment to their persons, business or estates, resulting directly or indirectly from their prosecution and conviction. He then proceeds to say that if innocent, he will be declared so by the court of first instance on the trial of the case and no more injury be inflicted than is necessary. Here he obviously is not using the words "irreparable damages" in the sense of irreparable injury and does not mean to deny the jurisdiction to interfere when irreparable injury is shown.

So in the case of *Old Dominion Tel. Co. v. Powers*, supra, the utmost that was shown there to enjoin were personal trespasses against the servants of the company. Judge Dowdell in denying the jurisdiction particularly says: "The averments of the bill of irreparable injury, *under the facts stated*, impart no equity to it," etc. The cases which were cited here are *Moses v. Mayor*, supra; *Atty. Genl. v. McGehee*, 172 U. S. 516; *In re Sawyer*, 124 U. S. 200; *Davis v. Am. Soc.*, etc., supra; *Crighto v. Dahmer*, 70 Miss. 602, and *Brown v. Birmingham*, supra. In several of these cases the jurisdiction to enjoin criminal prosecutions under void ordinances is expressly recognized. In the *Moses v. Bebee* case the particular equity claimed by the complainant was multiplicity of suits and not irreparable injury.

In *Aty. Genl. v. McGehee*, the court held that the suit was in effect against the State of Alabama, and could not therefore be maintained. But further than this, there is

nothing in the case showing irreparable injury.

In *re Sawyer* the Judge delivering the opinion expressly stated that no property right was invaded. "The whole object of the bill in equity filed by Parsons, the Police Judge of the City of Lincoln, against the mayor and councilmen of the city, upon which the Circuit Court of the United States made the order, for the disregard of which they are in custody, is to prevent his removal from the office of police judge. No question of property is suggested in the allegations of the matters of fact in the bill, or would be involved in any decree that the court could make thereon."

*Davis v. Am. Soc., etc.*, has been already discussed. That decision expressly went upon the ground that the first element of irreparable injury—the wrongful act—was wanting. But further than this, there were no special circumstances showing that there was any irreparable damage.

*Crighto v. Dahmer* was simply and solely an attempt by a tenant or alleged tenant to prevent by injunction, his landlord having him arrested for trespass: no irreparable injury or irreparable damage shown. The law was valid, and his only ground of interference was that he was not guilty. And though the judge delivering the opinion cries out and cuts himself at the idea of a court of equity interfering with a criminal prosecution, and in doing so attempts to discredit the opinion—although he does not refute the reasoning—of a leading case decided by an eminent judge—*Lottery Co. v. Fitzpatrick*, 3 Woods 222 (a case more cited than almost any other when protection to corporate franchises against wrongful destruction by public officers is granted by injunction) he need not have been at the pains of having said more to *Crighto* than: "You admit the validity of the law: your only reason for asking us to assist you by in-

junction is that you are innocent, and the motive of the prosecutor is vexatious. If we do that we will be usurping the jurisdiction of the criminal courts; and every person prosecuted criminally in Mississippi will be enjoining prosecutions because he is innocent."

In the case of *West, supra*, the allegations of irreparable injury were no more probative of irreparable injury than in the *Powers* case.

It is not the purpose of this paper to discuss the circumstances which will create irreparable injury. The cases cited will illustrate them. Attention is also invited to the case of *Austin v. Cemetery Assn.*, 87 Tex. 330, 28 S. W. 528.

We come now to consider the last element of the jurisdiction: the nature of the remedy which the courts of law can afford.

On the one hand, the result of an arrest and prosecution is the detention of the complainant—or of some other person whose liberty is necessary to the preservation of the property right, or even of some person whose prosecution only indirectly affects that right—on the other hand the result to that property itself: irreparable injury or destruction. The first result is one which the courts of criminal law and civil law courts can deal with adequately and completely: the other their full and complete vindication of the innocence of the accused person and awards of damages to him for false imprisonment in no way remedy. Here then is a case for an application of the equitable doctrine that equity interferes to protect rights of property when there is not an adequate remedy at law.

The reasons are well stated in the case of *Ga. R. R. and Banking Co. v. Atlanta*, 118 Ga. 486, 45 S. E. 256: "When equity acts in such instances, (i. e., to protect private property) it ignores the criminal features, and exercises

jurisdiction solely with reference to the effect of the act on property or business."

The courts have in some of the cases used the words "multiplicity of suits" to express the idea, "many vexations by criminal prosecutions or necessity for many damage suits if the injunction is not granted," this, not as a ground for jurisdiction, but as a circumstance to be weighed in determining the amount of the damage, as going to show irreparable injury. Thus Judge Somerville uses the words in this untechnical sense in the *Port of Mobile v. Railroad Company* case. From this loose use of the words, and in this untechnical sense, counsel in injunction suits have frequently attempted to draw the case in which the judges so spoke into authorities to the proposition that many criminal prosecutions or many damage suits constitute that "multiplicity of suits" which is ground of equitable cognizance. When this contention is met with in a case, it is necessary to deny it. Thus in *Brown v. Birmingham*, *supra*, and in *Old Dominion Tel. Co. v. Powers*, *supra*, and in *Moses and Beebe v. Mobile*, *supra*, the judges did not mean to say that "multiplicity of suits" in a technical meaning, is not a ground of equitable cognizance, but that many prosecutions are not the equivalent of the equitable ground. As a distinguished lawyer of England said in a criminal case long ago: "I did not know that a couple of hundred of black rabbits made a black horse."

Multiplicity of suits was defined in the *Moses and Beebe* case. "The foundation of the jurisdiction under some circumstances is the quieting and suppressing of litigation, and the remedy is known as a "Bill of Peace." To entitle the party to maintain it, there must be a right claimed affecting many persons; 'for if the right is disputed between two persons only, not for themselves, and all others in interest, but for themselves alone, the bill

will be dismissed.' 2 Story's Eq. Sec. 857; *Morgan v. Morgan*, 3 Stew. 383 (21 Am. Dec. 638); *Gunn v. Harrison*, 7 Ala. 585."

If one wishes to read an interesting case of equitable interference with criminal prosecutions on the ground of multiplicity of suits he cannot do better than examine the case of *City of Chicago v. Collins*, 175 Ills. 445, 51 N. E. 907.

The court there said: "The enforcement of a void ordinance may be enjoined in order to prevent a multiplicity of suits, at the instance of any person whose interests are impaired by it. \* \* \*

Where such court (of equity) is resorted to on the ground of prevention of multiplicity of suits, there must be a right affecting many persons. \* \* \* In the present case 373 complainants have filed their bill for relief. Their grievance is precisely the same, and arises from the same cause." Elsewhere the court said that the rights to be determined by the suit were identical with that of from 200,000 to 300,000 other citizens of Chicago.

The only circumstance which gives to injunction against criminal prosecutions instituted under void municipal ordinances which are directed against property rights with the intent and the power to destroy them a peculiar question to be determined, is the necessity of non-interference with the police power. After the court has fully seen that the act is not in fact referable to that power, but that the authorities are using the municipal charter as an instrument of oppression and destruction, the case ceases to have in it any features different from other cases inviting the remedy by injunction; and though you may state this superficial reason or that trifle, or make this or that distinction, the true reason for interference or non-interference is after all this and this only: "The want of an adequate remedy at



law." And it must also be admitted after a full and careful reading of the cases, that this is not a technical rule, but is founded on natural and substantial justice. In fact the remedy has been so administered in these cases, as, though the judges frequently contradict each other, that the facts in all of them range them properly into two classes: those cases in which there was an adequate remedy at law: under this head come the cases where the right was refused. In not one of these cases was there not a defect in the complainant's right, under the theory I have advanced in this paper; and those cases in which there was not an adequate remedy at law: under this head come the case in which the right was granted. In not one of these cases might not the grant of the writ have been supported by the broad grounds of equitable jurisdiction in general. It must be remembered that: "No inflexible rule can be laid down for the determination of the question as to whether jurisdiction exists in a court of equity. In general, an adequate legal remedy will suffice to make such courts hesitate in acting. But inadequacy in granting relief for the determination of a right may arise from causes other than mere forms of remedy, and it will not do to sacrifice justice on the mere ground of the form of the remedy, where convincing facts show that adequate relief can best be had in the form of a court of equity." *City of Chicago v. Collins, supra.*

## REPORT OF COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

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BY. S. S. PLEASANTS, Chairman.

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Your Committee on Legal Education and Admission to the Bar, respectfully report that the present law regulating admission to the bar is a great improvement upon our former law, as it removes many of the most common defects in the former. It secures to some extent uniformity in the requirements for admission, and prevents repeated applications by candidates and their frequent admission in one county after their rejection in another. Under the present law applicants are admitted upon the production of a diploma from the University of the State. The law course at the University is two years. This length of time, at least, is necessary for a student to properly qualify himself for admission, whether he studies in a law school, office or elsewhere, and we are of the opinion that applicants who do not have diplomas should be required to show that they have studied law for at least two years, all such applicants of course to pass the examination provided by law.

Every practitioner should be well versed in the ethics of his profession. The young practitioner should begin with a thorough knowledge of the code of ethics.

This association has a most excellent code of ethics, and we are of the opinion that this code should be made by law an additional subject for the examination of applicants.

Your committee recommend that the Committee on Legislation be instructed to prepare and submit to the Legislature amendments to the present statute: First,

Requiring applicants without diplomas from the State University before admission, to show that they have studied law for at least two years. Second, Making the Code of Ethics of this Association an additional subject for examination.

## TRIAL COURTS IN ALABAMA.

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BY HENRY FITTS.

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The object of this paper is to suggest some method of dealing with the courts of first instance in our own State. Its object is purely practical. It lays no claim to literary merits, and it is not the reflex of professional research.

The constitution of 1901 left this important subject almost as the convention found it. This is perhaps the one great defect of that admirable constitution. However, this was almost purely a sin of omission, for the present charter of our liberties leaves the legislature great latitude in establishing a judicial system. It is left to the discretion of the law-making body to confer upon either the circuit or chancery court the jurisdiction of the other court; that is to say, a combination of the two jurisdictions in one court is especially made permissible. There seems to be no restriction upon the powers of the Legislature in this direction, except that no court of general jurisdiction may be established exclusively for a county of less than 20,000 inhabitants and three and a half millions of taxable values. In this respect, the constitution yields recognition to the well nigh universal tendency to combine the administration of the two branches of jurisprudence in one and the same judicial officer; but more of this hereafter.

The Legislature of 1903, after wrangling through two sessions, passed what purported to be a law regulating the judiciary of the State, and in addition numerous localities secured the establishment of what purported to be local courts. The system, if system it could be called, the creation of which was thus attempted, was anything

but homogeneous or systematic. It seems that the Higher Power took care to give the lawyers of Alabama another opportunity to see that this vigorous commonwealth has a judicial system fit to discharge the first great function of free government. "To give justice without delay." First fell the great Lusk law. Its mourners are limited to those who lost office by its downfall. Then the local courts began to find a burial place beside the dead king, until for a time there was a morbid disappointment in the reading of a newspaper which failed to record a judicial decision putting at least one court permanently out of business. For a time, the first question considered by each lawyer upon going into court was whether or not he was really in court, or in attendance upon the performance of the local politicians' Punch and Judy show. This condition did not increase respect for the administration of the law, and for the time played havoc with the orderly dispatch of legal business. This condition it was which first tempted me to look abroad to see how others do this thing, of which we were at that time making so inglorious a mess.

In New Jersey a separate chancery court is still conducted, being held only in Jersey City, Camden, Newark and Trenton. This is a very small State, and the conditions prevailing there are entirely different from those with which we are surrounded. Vermont preserves the old Chancery system, and each Judge of the Supreme Court is a chancellor throughout the State. These appellate judges actually do the trial work. In Arkansas, Mississippi and Alabama, the chancery jurisdiction is still separately administered, and here, as in Dickens' time, "gives to moneyed might the means abundant of wearing out the right." In England, where this separate court had its origin, and flourished for ages, it has utterly perished from the land, and its accustomed place knows

it no more. In Virginia, where ancient traditions and old time customs are fondly cherished, there is one lonely Chancellor; and this is probably a mere matter of convenience in dividing the work among the judges of the City of Richmond.

In all of the Federal Courts, and in the courts of all of the American States and Territories except as above pointed out, the two jurisdictions are administered by the same judicial officer. In some instances with full recognition of the separateness of the two learnings, and in the others, as a conglomerate jurisdiction.

The first lesson to be learned from a comparison of the various systems of courts is that the best results are to be obtained from the simpler method of combining both jurisdictions in one officer. This will be no experiment in Alabama, as the very useful careers of the City Courts of Montgomery, Birmingham, Anniston, Selma, Gadsden and Tuscaloosa all attest. The advantages seem manifest. The number of judicial officers to be maintained may be reduced and the compensation of each judge correspondingly increased. The administration of the two jurisdictions broadens and elevates the administrator instead of narrowing his sphere of thought and study to the arbitrary rules of the common law, or tempting him to an over zealous following of the subtle intricacies of chancery practice. It makes the judgeship far more attractive intellectually. But above everything else, it tends to frequent terms of court and a closer touch of the exalted chancery power with the mundane subjects and victims of litigation. It injects into equity some of the virility and dispatch of the common law, and into the common law, some of the high-mindedness of chancery. While every practicing lawyer knows that a chancery jurisdiction is more important to property and business, Alabama provides five chancellors, as against some thir-

teen circuit judges. Every man in Alabama knows his circuit judge, and generally holds him in high esteem or in deserved contempt. The chancellor, in his hurried flittings from place to place, is known only of the lawyers. The average countryman of fair intelligence in Alabama only becomes cognizant of a chancery court when caught within the toils of that branch of jurisprudence wherein the law is deficient.

In courts of law, the case comes on for trial, the jury is empanelled, the trial had, and the thing is done. The chancery court is supposed to exercise an ever present fostering care over much of the property coming within its remedial process. The chancellor, through his receivers, his masters, his mandatory injunctions, his jurisdiction of estate of legal incompetents, is the custodian, guardian and managing agent for the owners. The proper administration of his duties demands that he should never be long absent from any place in which his court is held, and that his attention should be ever upon the property rights intrusted to his keeping. Some two days at a time twice a year in each county is manifestly an insufficient time within which for any mortal man to even make a respectable pretense of properly caring for the business which comes, or which under any adequate system would come, before the chancery court. In the rural districts of Alabama, and by this I mean all of the State except its few cities, the court of equity is more or less a stranger in the land, is little revered, and is much feared as an instrumentality of indefinite delay. In the judgment of the writer, it has little of that influence for good which its high moral tenets would exert, if it were but given the chance.

I think both the principles and practice of equity can and ought to be preserved in its distinctness from those of the common-law; that its remedies ought to be kept in-

tact; and that separate dockets should be kept. But I do think that more of those principles should be brought into constant use, and that those remedies should be ever at hand. A man administering both jurisdictions will be a better judge in each. Its intellectual attractiveness will draw to the judgeship a high type of men, if they are at all adequately paid.

Possibly a purely county system of one law and equity court in each county, as is the system of California and the State of Washington, is, where the counties are of adequate population, the most nearly perfect arrangement of *nisi prius* courts; but to this system are the potent objections of a too great intimacy of the judge with the parties to and subject matter of the litigation, the very restricted choice of material for the judgeship, the small salary which a comparatively small county can pay, the domination of local and petit politics in the selection of judges, and consequent influences detrimental to even handed justice. These are probably the considerations which have caused almost all of the States to cling to the circuit system; combining in one judge both the law and equity jurisdiction. The more advanced States have met all the objections to the circuit system by making the circuit small and the terms frequent. This keeps the judges out of strictly county politics, increases the number of lawyers from whom the judges may be chosen, and provides, or should provide, them adequate compensation.

In Indiana, Iowa, Kansas, Maryland, Michigan and Montana, the circuit courts, though not always called by that name, meet four times in each year in each county of the State. In Louisiana, Maine, Missouri and Utah, the itinerant judge gets around three times each year. In some of the less populous States the judge gets around only twice a year. In New York, and some other of the



more populous States, where several judges are elected for one district, they meet and fix the terms for the year by an order entered upon the court minutes.

The diversity between the arrangements for trial courts in the different States is much less than I had expected to find it. In most of the States there are three courts, exclusive of the probate court, viz: Justices of the Peace, Circuit Courts having just about the jurisdiction of the city courts of Alabama, and one appellate court. This seems to the writer the system for Alabama. The circuit court, with both the law and equity powers, and a simple and yet effective statutory method of settling the estates of decedents and of guardianships, would gradually absorb such of that business as is now done, half done, or left undone by the so-called Probate Courts. The circuits should be small, and four terms of court should be held in each county each year. It might not be necessary or convenient to empanel juries at each of these terms. The duties of the judge should be so arranged that he would be at work on every business day for thirty-six weeks in each year. Such a system should, of course, provide for a circuit court in each of the great counties of the State, with a sufficient number of judges for the transaction of the business of the county, say six in Jefferson, and three each in Montgomery and Mobile. Counties like Calhoun, Etowah, Dallas and Tuscaloosa would probably be best served by a judge having only one other and smaller county in his circuit.

But a comparative study of judicial systems leads to one very clear conclusion, which is, that the effectiveness of the courts depends not so much on a system of circuits or districts, or common pleas or general sessions, but in far larger part upon the personal efficiency of the judge. The system I have sought to outline provides for the judge a plane of high intellectuality, and that will of itself be

an attraction to earnest devotees of this great science. But man must live be he never so intellectual, he must be housed and clothed it matters not how learned. He can not be a good judge, for he cannot be really a good man, unless he is beyond the reach of want. Judges must be well paid if we are to have courts that will transact the business. Since this paper purports to be practical, I venture to suggest that in view of all of the conditions prevailing in this State, within and without our profession, the circuit judge, being required to pay his own traveling expenses, ought to be paid not less than three hundred dollars a month. This is an increase only commensurate with the advanced cost of living, and not, I believe, commensurate with the increased cost of professional earnings in later years. The increase is as nothing compared with the advance in wealth, income and activities of Alabama, since the present salaries were fixed. A statistical comparison would unduly lengthen this paper, but is accessible in a report of the State auditor of some twenty years ago and his report for the current year.

A circuit judge, especially when in him are vested the prerogatives of the chancellor, occupies to my mind the noblest of all stations in secular life. The functions of his office are most God-like. His opportunities for uplifting the communities in which he exercises his jurisdiction are pronounced. No man is better placed to surround himself with, and to live and die among friends. Add to this a decent income, and the office will be found appealing to all those self-respecting men who, with a reasonable regard for the material needs of life, love the law as a science, and cherish it as the instrumentality of human justice. I would not have the salary so attractive as to appeal to those who regard the law as a money getting trade. A well paid judiciary is the best

economy. Unless you improve the quality of work in the trial courts, or in some of them, you must make an intermediate appellate court. The congestion in our Supreme Court is due, not to the volume of business originating in the lower courts, but to the lamentable fact that in some of the trial courts the only law the judge knows is what the appellate tribunal teaches him in the reversal of his decisions.

Good judges, it matters not how well paid, are the cheapest of all governmental instrumentalities,—poor judges are the most costly. The fees of witnesses, bailiffs and jurors are piled up when it takes two or three trials to accomplish what one should achieve; when it takes three days to do the work which should be done in one. The lowest cost of running a jury session of court for one day is \$50, and it may easily be five times as much. But there is a greater consideration. To many of our people the trial court is the only court. It is not every case which justifies an appeal. Every litigant is not prepared to pay the price of appeal. To these the trial judge represents the law. And again, there is seldom but one genuine trial of a cause. We all know the mending of fences, the bolstering up, the planing down of rough edges, characteristic of a second trial. The first is a trial of the facts. The second is a tournament of over-stimulated ingenuity.

But how is this new order of things to be brought about? What is the practical road to the accomplishment of this end? The Lusk law was put upon its passage and laden down with innumerable amendments, pulled hither and thither in the service of special interests, largely I think because it was proposed to put the same into effect immediately before the election of judges and solicitors, and after the political fences had been built up, and the political banquet lay ready for devour-

ing. I believe that the Legislature of 1907 should pass a general court bill to go into effect at the expiration of the terms of the present circuit judges and solicitors, that is to say, in 1910. The constitution provides, or seems to provide, that the term of no circuit judge or chancellor shall be shortened by any change in his circuit or division. Any effort to re-align the circuits before 1910 will result in great confusion, and possibly much opposition upon the part of the prosecuting attorneys now in office. The registers in chancery seem, under the constitution, to have a peculiar security in their positions during the tenure of the chancellor by whom they were appointed. I believe a better law, more patriotically and wisely framed, can be passed, to take effect three years after its passage; when it will not affect any vested rights of officeholders, than if a law to go into immediate effect were attempted. This will not prevent the cities, in which business is congested, obtaining immediate relief from the Legislature of 1907; nor will it prevent the present judges from securing a reasonable increase in their salaries for the remainder of the terms for which they were elected. It is plain, under section 150 of the constitution, that these salaries may be increased, but not diminished during their terms of office. I have reluctantly reached the conclusion, that a new system must be postponed for these several years, after having made an earnest effort to frame a suggestive law which would leave each of the present judges, chancellors and solicitors in the enjoyment of his office, and at work at his home; and while this is more nearly possible of achievement than you would reasonably expect, it cannot be wholly accomplished. When we do come to the framing of a general court law, it might not be amiss to adopt in some portions of the State a large circuit with several judges. Such a system has the advantage of enabling the several

judges within the circuit to be of great assistance to each other in many ways, enlarges the material from which judges are to be chosen, and if these judges should alternate to some extent in the holding of court, would have the effect of stimulating the activities of each.

In the eighth and eleventh circuits composed of some nine counties in Northwest Alabama, there are now at work two circuit judges and one chancellor. Perhaps these nine counties would make a splendid First Judicial District, with three judges, each adequately paid, each working thirty-six weeks a year, giving the nine counties some twenty weeks more of court than they now have, with the work better distributed, better arranged, and on the whole better done.

At the risk of being tedious, I am unwilling to leave this subject without giving expression to one, and only one, further thought. While I yield to no one in my reverence for equitable doctrines and remedies, it does seem to me that evidence in chancery cases should be taken just as it is taken in law cases. Every witness who can be reasonably gotten to the stand ought to be put upon it. If personal observation is an aid to the discovery of fraud, perjury or evasion in the law case, it is equally so in the chancery case. No good reason for the difference in the manner of taking testimony has ever been advanced. It does not affect the form of the pleadings, nor the effectiveness of the remedy. The deposition is, in large part, the reason for the longevity of cases on the chancery docket. The appellate court says, "We will not review this evidence because the circuit judge saw and heard the witness, giving him an advantage over us in arriving at the truth." The same court then reviews every case submitted to the chancellor by deposition. If the reason for reviewing the decision of the chancellor was stated with the same candor as the reason for de-

clining to review the decision of the circuit judge, would not that reason be this: "We and the chancellor have the same half chance of getting at the truth?" With frequent terms of court, let us bring the lying witness and the righteous judge face to face.

If this paper has proven tedious, I beg that you will charge it to the theme; and if it has the slightest tendency to give direction to the thought of the lawyers of Alabama upon this great subject, it furnishes its own apology.

REPORT OF COMMITTEE ON JUDICIAL ADMINISTRATION, AND REMEDIAL PROCEDURE.

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BY A. H. ALSTON, Chairman.

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While it is recognized by all thinking and intelligent people that courts are established to administer the law, and enforce its execution; and without courts, there could be no organized society; and all would be in a state of chaos, confusion and anarchy, yet, even to those not learned in law, or court procedure, it is frequently evident that the purpose that brought into life courts has not been maintained, and justice has been defeated by a failure to administer the law. For this, there must be a cause that should be remedied.

Experience as a lawyer and as a judge, causes the writer to reach the conclusion that the fault primarily is to be found in the manner in which our jury system is executed. So far as the Jury System is concerned, it is the wisest method that the wisdom of man can evolve for the protection of society and the adjustment of all disputed rights. And during the centuries of its existence, the experience and wisdom of the wisest statesmen has not been able to suggest a better plan for the trial of questions involving the life, liberty, or the property rights of man. And it is today regarded, and will ever so continue, the "great bulwark of our civil liberties."

When any cause is submitted to an intelligent, impartial and courageous judge, and an intelligent, honest and courageous jury, who go into the jury box, determined to be governed by the solemn oath that has been admin-

istered to each member thereof, justice is rarely defeated. But can we say that every case tried is submitted under such conditions? I am sorry to say that we can not; and why not? For the law provides in every case for the very conditions just stated. The answer is this: Imperfect execution of the jury system. This is found to exist in many respects. In the first place, our laws are too liberal in exempting citizens from jury duty. Why should a man be exempted from jury duty because he has reached the age of sixty, unless he is physically or mentally disabled? Why should a township trustee, or a member of a military or fire company be exempted?

The liberality of our laws exempting from jury duty, practically deprives the courts of the services of a class of citizens qualified for this important work. Another trouble arises from a want of care on the part of the officials in selecting the names of the jurors when the jury boxes are filled. The law clearly defines the qualifications of jurors, and says they shall be selected from the male residents of the county, over twenty-one and under sixty years of age, and shall be fit to discharge the duties of jurors, with honesty, impartiality and intelligence, and are esteemed in their community for their integrity, good character and sound judgment. Yet we often find men serving as jurors, who do not possess the indispensable requisites for the administration of justice. Yet they have been declared by the Jury Commission to possess every requisite prescribed by law; and the judge, although, he may know that the juror does not measure up to the qualifications required by law can only propound to him the questions prescribed by statute. And as a result, we find many incompetent men for jury service pronounced qualified persons to serve as jurors.

As a matter of common knowledge to courts and law-



yers, it can be said that frequently in civil and criminal cases, jurors who can scarcely read and write have submitted to them for analysis, confused masses of evidence elicited from a large number of witnesses it has required days to examine. The judge can render no aid to the jury in sifting the testimony other than give the rules by which they should be governed in weighing the evidence; and the argument of the counsel have presented views so entirely divergent, that the unskilled man finds himself in a wilderness of despair, when he retires to the jury room to make up the verdict. And if there be one or two strong men on the jury, the verdict is directed by them instead of the entire number as the law contemplates. This defect can be at least remedied to a considerable extent by reducing the causes for exemption from jury service.

What the writer has said, of course, has reference to the "General Jury Law." For, we are aware of the fact that we have in Alabama, several "Jury Laws." Some are an improvement on the general law. I would refer to the jury laws of Dallas County as being a great improvement on the general law, and invite the attention of the next Legislature to it, with the hope that it be made the law of the entire State. Under that jury law, it is well nigh impossible to stock a jury or to influence before selection, the action of the Grand Jury. These are virtues that should certainly commend themselves to our law makers.

Under the general law in a civil cause, it is ground for challenge for cause, if the juror is related by consanguinity or affinity within the prohibited degrees to counsel on either side of the case; but not so in a criminal case, no matter what magnitude it is. In one county in the state within the knowledge of the writer, it is ground for challenge for cause in both civil and criminal cases,

and this should be the law applicable to jurors in every trial court in the State.

In motions for new trials, the law gives either party in civil cases the right to appeal to the Supreme Court. But this right is not given to defendants in criminal cases; there is no logical reason that can be assigned for denying the right of appeal to a defendant in a criminal case. Certainly, it is not the theory of the law to throw greater safeguards around the property rights of its subjects, than it is to guard their lives and liberties. The statute should be so amended as to give the right of appeal to the Supreme Court in both civil and criminal cases, from the rulings of the lower court on motions for new trials.

While on the question of appeals to the Supreme Court, we can see no good reason why the state should not be put on an equal footing with the defendant, and be allowed to reserve exceptions to the rulings of the trial judge, and have them reviewed by the Supreme Court; this would be in harmony with the purpose of the law, which contemplates an absolutely fair and impartial trial; the scales of justice to be evenly balanced between the State and the defendant.

The law gives the defendant the right to have his trial removed to another county, when he sets forth reasons why he cannot have a fair and impartial trial in the county in which the indictment is found. That is a wise and just law, so far as it goes, but the right to change the venue, for like reasons should also be conferred upon the state; for as it often occurs that it is as necessary to remove the place of trial from the local environments prejudicial to the State, as it is to procure a fair and impartial trial for the defendant.

The statute should be so amended as to allow either, the right to change the venue, when a fair and impartial

trial cannot be had in the county of original jurisdiction. In felonies when a defendant is convicted and appeals to the Supreme Court, he has to remain in jail until his case is passed on without the privilege of bail; if the supreme court reverses and remands the case, he is then allowed bail. We are of the opinion that bail should be allowed in all cases not capital, pending an appeal.

Our information is, that under the Georgia law in all cases except capital cases, the defendant is allowed bail after conviction and pending an appeal to the Supreme Court. The wisdom of the Georgia law, after long experience, has been demonstrated by satisfactory results.

In all homicides, the law makes it the duty of the jury to determine the guilt or innocence of the defendant, and if guilty, to determine the degree, and to affix the punishment. If guilty of murder in the First Degree, the punishment must be fixed at death or imprisonment in the penitentiary for life. If convicted of murder in the Second Degree, he must be imprisoned in the penitentiary for a period of not less than ten years. The statute fixes the minimum, but not the maximum punishment; to that, there is no limit. Of course it was not intended by our law makers to impose the same punishment for murder in the Second Degree that is prescribed for the highest degree, and if the jury were to bring into court a verdict finding the defendant guilty of murder in the Second Degree with the punishment fixed at imprisonment for life in the penitentiary, it could not, of course, support a valid judgement. Yet, we find the spirit of the Law frequently violated by the punishment being fixed at a period of time greater than the convict could hope to live, even surrounded by the quiet and comforts of home life. We think that the law should

be so amended as to fix a maximum limit of not more than twenty years.

In the matter of pleading, we find that under the general law, when the term is for only one week, the defendant must plead or demur to the complaint within the first day; and when the term is for more than one week, by noon of the second day. The provision of this statute frequently causes continuances that result disastrously to just and meritorious claims, by allowing pleas or demurrers filed at a time when the case may stand for trial, without giving time for consideration of the plea or pleas by the counsel for the plaintiff. For instance, a case may be set for trial on the afternoon of the second day of the term, the plaintiff may be ready for trial yet at noon, the defendant in the exercise of the rights conferred by statute, files one or more pleas that may be a surprise to the plaintiff, and that may make it necessary on his part to produce other and different testimony to meet the unexpected issue raised by the pleadings; and the condition of the docket; and the time allowed for holding the court, such as to prevent passing the case until a later day of the term. The result is a continuance which gives the defendant six months in which to become insolvent, when perhaps his plea that secured the desired continuance was without merit and could not have been sustained. To prevent this evil, we suggest that the defendant be required to file his pleas or demurrers at least ten days before the first day of the trial term, which would give the plaintiff an opportunity to examine them and prepare to meet the issues raised. This can be done by properly amending the present statute prescribing the time in which pleas are to be filed. We do not wish to be understood as desiring to destroy or abridge the right to file such other pleadings in such time as the sound discretion of the court may direct.

There should be some limit or restriction governing the time for requesting special written charges. As the law now is, there is no time for asking these charges; they may be asked at any time before the jury retires. I suppose that every trial judge has had to hold the jury back for some time after the general oral charge of the court had been given, that he might pass upon special charges, which were literally given in the oral charge of the court. Special charges should be requested before the arguments begin, then the court would have time, if needed, to carefully consider and pass upon them without unnecessarily detaining the jury, which is often tired and worn by long confinement. Of course, if the charge is merely explanatory, the right to ask it at any time before the jury retires should be allowed.

For years past, courts and lawyers have recognized the necessity for court stenographers, but still Alabama has none, and bills of exceptions continue to go to the Supreme Court inaccurate and largely the result of guessing after wrangling between counsel; with the judge as final arbiter or guesser after the facts have become stale and dim in his recollection. Justice as well as economy demand that a competent court stenographer be provided for each circuit, who will be required under oath to correctly record the evidence, rulings of the court and all exceptions reserved during the trial. It is often that bills of exceptions are presented after several extensions of time have necessarily been granted. The lapse of time and intervening matters have rendered it well nigh impossible for the counsel or the judge to correctly remember the mass of testimony, and all exceptions reserved. But with competent court stenographers, this trouble would be avoided, and the ends of justice better subserved.

Mr. President, I am aware that this report contains

many suggestions, and some of them may not seem wise to this body; but the need of each has frequently seemed clear to the writer in the discharge of judicial duties; and they are made with the hope of remedying some of the defects pointed out in our judicial system as now administered.

REPORT OF COMMITTEE ON LEGISLATION.

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BY J. J. MAYFIELD, Chairman.

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*To the President and Members of the Alabama State Bar Association:*

The Committee on Legislation begs leave to submit the following report:

Your Committee on Legislation in its last report, made by Hon. Alex. T. London and W. L. Martin, at the last annual meeting, concluded with the following suggestion:

"In conclusion your committee would suggest Hon. J. J. Mayfield, the present Codifier, be appointed chairman of the new Committee on Legislation, and that the Secretary be authorized to employ the necessary assistance to transcribe all bills heretofore reported to this Association which have not become laws, and an abstract of all suggestions heretofore made, and to furnish a copy of this material to the chairman of your Committee on Legislation to be examined and reported on at your next session which will be held before the next Legislature meets."

This report was concurred in by the Association. (See report of proceedings of last meeting, pp. 12 and 13), and is the cause and excuse for the present report assuming the form and proportions it does, instead of the usual ones as prescribed by the laws of the Association.

Your faithful, efficient and esteemed Secretary performed his part of the suggestion set out above, and furnished the chairman of this committee copies of proposed bills and suggestions heretofore made to the Association which had not become laws.

These bills and suggestions, reported, together with

all others he could find from an examination of the proceedings of the Association, have been examined carefully by the chairman in connection with his duties as Code Commissioner and have been disposed of as best he could in accordance with this report. It would extend this report to unusual and unnecessary length and be an undesired consumption of the time of this Association to attempt to enumerate and define each bill or suggestion, and to report in detail the manner of its disposition. It would probably require a week's session of the Association to consider and approve or disapprove the act of the committee or commissioner in the disposition of these numerous bills and suggestions heretofore reported to this Association during the last twenty-eight years. It is, therefore, deemed sufficient to report that the work assigned to the chairman has been undertaken and performed as best he could. It was found upon examination that many of the proposed bills and suggestions had been duly enacted into laws, some directly by statutes, some indirectly by statute, some by constitutional provisions in the new Constitution, some by being inserted in previous Codes by the Code Commissioners. A great number of these bills and suggestions have not yet been enacted into laws. Some of these, in the opinion of the chairman of this committee, ought not to be enacted, and most of this class, he must confess, were originally suggested by none other than himself. Those remaining which merit enactment, as to which the Code Commissioner has the power and authority to insert in the manuscript for the new Code, have been or will be placed therein, either as new sections or amendments to existing sections of the present Code, which of course will be reported specifically to the Governor and Legislature by the commissioner, which report must be verified by affidavit.



Those which, in the opinion of the Code Commissioner, he has not the authority to insert in the manuscript, he will report to the Governor and Legislature in the form of proposed bills and recommend their enactment in accordance with the provisions of the act providing for the new Code. These bills are as follows:

First. To establish a uniform law as to the Execution of Wills.

Second. To establish a uniform law relative to the Probate of Wills.

Third. To establish a uniform law relative to Negotiable Instruments.

Fourth. To establish a uniform law as to Weights and Measures.

Fifth. To authorize the appointment of a Referee in Civil Actions at law.

Sixth. To further regulate the Practice in Civil Actions at law, as to equitable defenses, and as to judgments and verdicts against one or more of several parties.

Seventh. To regulate admission to the Bar and to create a Board of Examiners and specify the duties.

Copies of which are herewith submitted and made a part of this report. Except the bill providing for uniform laws as to negotiable instruments, which is not set out on account of its length, and the fact that it is published.

The chairman also submits herewith the copies furnished him by the Secretary, which have been disposed of in the manner set forth above.

If it is not out of place in this report, the chairman of this committee, as Code Commissioner, and as shown in this report, it was for this reason he was made chairman of this committee, desires to report to this Association that, as a part of his report to the Governor and Legislature in accordance with the provisions of the act providing for the new Code, he will submit a number of bills

and recommend their enactment; that among these bills are three which he feels this Association will be greatly interested in; one is a bill to provide for a Municipal Code, which will be substantially the one known as the Walker bill, prepared by Hon. R. W. Walker, of Huntsville, and I believe with the assistance of Hon. Alex. T. London, of Birmingham. The commissioner has devoted a great deal of time and labor upon this subject, he has drafted a number of bills, himself, and examined a great number of others, but has reached the conclusion that this bill with a few amendments or changes, will be the best Municipal Code of any State in the Union, and he feels that the people of this State owe Judge Walker and Mr. London a debt of gratitude for this bill. It shows upon its face, and more certainly if studied, that it required great labor, research and ability to prepare it. If it shall be enacted and shall prove to be the meritorious bill which the Code Commissioner believes it to be, Judge Walker and Mr. London are the men to whom the credit is due. I know there are some objections assigned to this bill, but those provisions as to which the objections are valid can be easily corrected.

Another of these bills is one to provide for official stenographers for all the circuit and city courts in which trials by jury are had. The commissioner believes this will do much to clear the crowded dockets of the courts and to keep them clear, and to insure speedy and fair trials and to enable the Supreme Court on appeal to better review the trials of the lower court, because it will be more fully and accurately shown by the transcript. A stenographer is as much a necessity to a busy trial court today, as a clerk was fifty years ago. It is as much a necessity to the busy court as to the busy lawyer. The latter cannot succeed without a stenographer; the former should not be made to try the impossible.

The third is to provide a *Lis Pendens* Record and Notice of Actions, which under the doctrine will create a lien upon real estate. There are some local statutes, applicable only to certain counties on this subject. It is believed the law should be general, and there may be some question as to whether a local statute on this subject is constitutional.

The commissioner will be very grateful for any suggestions this Association may deem proper to make as to these subjects or bills, and as to any other subjects or bills within the scope of his duties as Code Commissioner. He desires to here acknowledge his indebtedness to this Association and many of its members, too numerous to mention in person, for valuable assistance they have given him in the discharge of his duties as commissioner and chairman of this committee.

It is but justice that I, as chairman of this committee, say that I have not had the opportunity to confer with the other members, and they of course are not responsible for this report, and it is made subject to any amendments that the other members of the committee may desire to make.

Bills not disposed of and which are recommended to the Association and the Legislature for enactment into law:

#### A BILL TO BE ENTITLED AN ACT

To Establish a Law Uniform with the Laws of Other States Relative to the Execution of Wills.

Section 1. Be it enacted by the Legislature of Alabama, That a last will and testament, executed without this State in the mode prescribed by law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same

force and effect as if executed in the mode prescribed by the laws of this State; provided said last testament is in writing and subscribed by the testator.

Enacted in Wis. State 1898, Sec. 2283; Iowa Code 1897, Sec. 3309.

### A BILL TO BE ENTITLED AN ACT

To Establish a Law Uniform with the Laws of Other States Relative to the Probate in this State of Foreign Wills.

Section 1. Be it enacted by the Legislature of Alabama, That any will duly admitted to probate without this State, and in the place of the testator's domicile, may be duly admitted to probate and recorded in this State by duly filing an exemplified copy of said will and of the record admitting the same to probate; and such will shall then have the same force and effect as if originally proved and allowed in this State.

Enacted in Wis. State 1898, Sec. 3789; Iowa Code 1897, Sec. 3294.

### A BILL TO BE ENTITLED AN ACT

To Establish a Law Uniform with the Laws of Other States for a Uniform Standard of Weights and Measures.

Section 1. Be it Enacted by the Legislature of Alabama, That the avoirdupois pound to bear to the troy pound the relation of 7,000 to 5,760. The hundredweight shall contain 100 of avoirdupois pounds, and the ton 20 hundredweight.

Sec. 2. The barrel shall contain 31 1-2 gallons, and the hogshead two barrels.

Sec. 3. The dry gallon shall contain 282 cubic inches; the liquid gallon 231 cubic inches.

Sec. 4. The bushel shall contain 2,150.42 cubic inches.

Sec. 5. A barrel of flour measured by weight shall contain 196 pounds; a barrel of potatoes, 172 pounds.

Sec. 6. The bushel of wheat to contain 60 pounds.

The bushel of barley, 48 pounds.

The bushel of Indian corn, or of rye, 56 pounds.

The bushel of oats, 32 pounds.

The bushel of corn meal, 50 pounds.

The bushel of rye meal, 50 pounds.

The bushel of peas, 60 pounds.

The bushel of potatoes, 60 pounds.

The bushel of apples, 48 pounds.

The bushel of carrots, 50 pounds.

The bushel of onions, 52 pounds.

The bushel of clover seed, 60 pounds.

The bushel of herdgrass, or timothy seed, 45 pounds.

The bushel of bran and shorts, 20 pounds.

The bushel of lime, 70 pounds.

The bushel of flaxseed, 55 pounds.

The bushel of coarse salt, 70 pounds.

The bushel of fine salt, 50 pounds.

The bushel of sweet potatoes, 54 pounds.

The bushel of beans, 60 pounds.

The bushel of dried apples, 25 pounds.

The bushel of dried peaches, 33 pounds.

The bushel of rough rice, 45 pounds.

The bushel of upland cotton seed, 30 pounds.

The bushel of Sea Island cotton seed, 44 pounds.

The bushel of buckwheat, 48 pounds.

Enacted in Mass., Laws 1894, Chap. 198; Also in Conn.

## A BILL TO BE ENTITLED AN ACT

To authorize the appointment of Referees in Civil Ac-

tions at Law, involving matters of account and to regulate the practice in such cases.

Section 1. Be it enacted by the General Assembly of Alabama, That in all civil actions at law in which matters of account are in controversy, the court may, on the application of either party, direct a reference to one or more competent persons, not exceeding three, as referees to state and report an account between the parties, and the amount that may be due from either party from the other, which report, when confirmed by the court, shall be final and conclusive between the parties and judgment shall be entered therein; but either party may, within ten days after notice that a report has been made enter his dissent and demand a trial by jury, the costs of the reference to abide the result. Upon such trial the report of the referee shall be prima facie evidence of all the matters therein found and reported. At the time of demanding the trial the party shall file his exceptions to the report, and matters not excepted to shall be treated as true upon the trial; either party may move for a new trial, take bills of exceptions and have an appeal, as in other cases.

Sec. 2. Be it further enacted, That either party, without demanding a trial by jury, may file exceptions to the report of the referee; and unless the other party demand a jury the court shall hear and determine the same, and may set aside or correct the report or direct another reference to the same or other referees.

Sec. 3. Be it further enacted, That referees shall have power to administer oaths, to subpoena witnesses and compel their attendance by attachment, that depositions may be taken as in law cases for use before them, and that they shall receive for their services as referees the same compensation to which registers in chancery would be entitled for the same kind of service.

A BILL TO BE ENTITLED AN ACT

To further Regulate the Practice in Civil Actions at Law.

Section 1. Be it Enacted by the General Assembly of Alabama, That a defendant in any civil action at law may plead equitable as well as legal defenses, and the plaintiff may set up in reply to any plea any sufficient answer thereto, whether legal or equitable, and when such equitable defenses are interposed by either party and sustained, the law court shall have power and authority to mould its judgments so as to do full and complete justice between the parties.

Sec. 2. Be it further enacted, That in civil actions at law, judgments may be rendered for or against one or more of several plaintiffs or for or against one or more of several defendants; and in such cases the judgment and verdict shall be as the right may appear among the several parties to the action, and shall state separately any amount allowed to any of the parties.

Sec. 3. Be it further enacted, That in such actions such and so many verdicts and judgments—joint, separate and cross—as may be necessary to the adjustment of the rights of the several parties may be rendered.

A BILL TO BE ENTITLED AN ACT

To Regulate Admission to the Bar, and to Create a Board of Examiners and Specify the Duties.

Section 1. Be it enacted by the Legislature of Alabama, That there is hereby created a Board of Examiners on Admission to the Bar.

Sec. 2. Said board shall consist of five members, and they shall be appointed by the Chief Justice of the Supreme Court, and shall hold office for the term of four

years, and until their successors are appointed and qualified. They shall be first appointed in the month of March, 1892, and every four years thereafter. Should any member of said board die or resign a successor shall be appointed by the Chief Justice to fill his unexpired term.

The members of said board shall be practicing attorneys of the State of Alabama, and possessed of the necessary qualifications for the performance of the duties of the office. All members, and those appointed to act for members temporarily, as hereinafter set out, shall communicate their acceptance to the Chief Justice in writing.

Sec. 3. The duties of said board shall be to examine and pass upon applications for admission to the bar.

Sec. 4. The members of said board shall elect one of their number as chairman.

Sec. 5. Said board shall meet at the Capitol in Montgomery twice a year on the first Wednesday in April, and the first Wednesday in October, and such other times as they may deem advisable.

At such meetings said board shall proceed to examine all applicants for admission to the bar, who shall present themselves for such examination and whose names shall have been presented to the chairman by any of the judges of the courts of the State as being possessed of all the necessary qualifications for admission, except legal learning, and who shall have paid the necessary fees.

Sec. 6. The members of said board shall at such meetings, propound orally, or in writing, to such applicants, a sufficient number of questions to thoroughly test his learning upon the following subjects:

1. Of the law of real property.
2. Of the law of personal property.
3. Of the law of pleading and evidence.
4. Of the commercial law.
5. Of the criminal law.



6. Of chancery and chancery pleadings.
7. Of the statute law of the State.
8. Of the Constitution of the United States and of the State of Alabama.

Which questions the applicant shall, in the presence of said board, answer in writing without aid from any person, or from examination of books. Every examination held by said board shall be so substantially different from any other examination previously held as that an applicant may not by the study of any previous examination qualify himself to pass.

Sec. 7. When the written examinations are completed, they shall be examined by the members who shall endorse thereon their judgment and conclusion as to the sufficiency or insufficiency of the legal learning of the applicant, and forward to the Clerk of the Supreme Court those which are in the judgment of a majority of those acting upon the board sufficient to entitle the applicant to admission. Upon the receipt of said papers by the Clerk of the Supreme Court he shall present them to the Chief Justice or any Judge of the Supreme Court. Thereupon said judge shall cause to be entered upon the minutes of the court an order granting such applicants license to practice in all the courts of this State; provided, however, that if the examination was held by five examiners and two of them shall express the opinion that an applicant is not qualified, or if the examination is held by three and one of them shall express the opinion that the applicant is not sufficiently qualified, then the examination papers of such applicant shall be examined by one of the Judges of the Supreme Court, and if he is of the opinion that the applicant should not be admitted, his application shall be dismissed; otherwise he shall be admitted. If the examination is held by four examiners and two of them

express the opinion that an applicant is not sufficiently qualified, such applicant shall not be admitted.

Sec. 8. Any three members of the board may act in holding such examination, and if for any reason any member cannot attend, he shall communicate that fact in writing to the chairman, and if more than two report their inability to attend, he shall report that fact to the Chief Justice, who shall appoint one or two other practicing attorneys to act in holding such examination in the place of those who are unable to attend.

Sec. 9. Any person, being a citizen of the United States, a resident of this State, above the age of 21 years, and of good moral character, who shall desire to be admitted to practice as an attorney and counsellor at law may make application in writing to the chancery, circuit or city court of the county of his residence, making known his wish. The court shall thereupon inquire into the moral character and qualifications, other than legal learning, of the applicant, and to that end may examine witnesses; and if the applicant be found possessed of all the necessary qualifications, except legal learning, the court shall so adjudge and enter an order upon the minutes to that effect, but if the applicant be found not to be so qualified his application shall be dismissed at his costs.

Sec. 10. Every applicant found to be so qualified, shall pay to the clerk of said court the sum of \$10, which amount the clerk shall remit to the chairman of the Board of Examiners, together with his certificate of the finding of the court upon the qualifications of the applicant. The amount so received by the chairman from the applicants shall be divided equally between himself and such other members of the board who shall conduct the examination, the fee paid by each applicant being for the compensation of the members of the board hearing his examination.

Sec. 11. When an applicant is found not to be qualified for admission, his application shall be dismissed by the board, but he may be permitted to make another application after the expiration of six months upon paying the stipulated fee.

Sec. 12. If the applicant present to the court, with his written application, a diploma granted him by the University of Alabama conferring the degree of Bachelor of Laws, the judge or chancellor shall inquire into his moral character and other qualifications, but need not examine him on law, and may, if he be otherwise qualified, grant him a license without a certificate from the Supreme Judges.

Sec. 13. Every attorney and counsellor at law, before he shall be permitted to practice, shall produce his license in some court of record where he intends to practice, and in the presence of such court, shall take the following oath or affirmation, to-wit: "I do solemnly swear (or affirm) that I will demean myself as an attorney and counsellor of this court, according to the best of my learning and ability, and with all good fidelity, as well as to the court as to the client; that I will use no falsehood or delay any person's cause for lucre or malice, and that I will support the Constitution of the State of Alabama so long as I continue a citizen thereof, so help me God."

Sec. 14. The courts may license minors in the same manner as adults, if possessing the maturity, character and attainments requisite, but the minors so licensed shall be precluded from pleading infancy in any civil proceedings against them.

Sec. 15. If any attorney commences practice before taking the oath prescribed by the preceding section, he forfeits the sum of two hundred dollars, one-half to the use of the person suing for the same, and the other to the State.

Sec. 16. This act shall not be construed so as to prevent any person from conducting and managing his own cause in any court in this State.

Sec. 17. Be it further enacted, That every attorney removing to this State from any other State shall be admitted to practice in all the courts of this State, provided he had been admitted to practice before the Supreme Court of such other State for as much as two years, upon motion before the Supreme Court of this State, supported by such evidence as said court may consider sufficient, of the facts entitling him to admission, and of his other qualifications.

**REPORT OF THE COMMITTEE ON CORRESPONDENCE.**

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**BY F. G. BROMBERG, Chairman.**

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**BOARD OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION.**

Since the establishment of Boards of Commissioners on Uniformity of Legislation in a large number of States, in the South as well as in the North, (See report of meetings, 1901, p. 140; and 1904, p. 158), it has seemed useless to endeavor to maintain correspondence with separate State Bar Associations, for the purpose of promoting Uniformity of Legislation in the several States, as required by the by-laws creating your committee. In fact, the committee can best discharge their duties according to the spirit of the law of their existence, if not according to its letter, by urging upon this Association the passage of a resolution calling upon our Legislature to do, as has been done already by thirty-four other States and one Territory, viz: to create a similar Board of Commissioners for the State of Alabama.

Hon. Amasa M. Eaton the President of the National Conference of State Commissioners on Uniformity of Laws has sent to this committee a draft of the law as adopted by the other States above referred to under which the respective Boards of Commissioners have been created in the several States before referred to, with request that this Association co-operate with him in securing the passage of this bill by our Legislature as a law. A copy of which draft of a bill, modified in form only to suit our

local requirements, is annexed to this report as Exhibit thereto.

### NEGOTIABLE INSTRUMENTS LAW.

In the letter covering the foregoing draft of suggested Legislation, President Eaton under date of January 8th 1906, writes as follows:

"You will see by the copy of my address on Uniformity of Legislation, that I send you herewith, I have corrected my omissions to credit your Bar Association, and your committee with having taken the first step in this country to establish uniform legislation in the law of negotiable instruments see p. four (4) of my address. My object is historical accuracy and to give credit where it is due, and to that end I have also inserted this correction in my annual address as President of this Conference. Please state this fact at the next meeting of your Bar Association."

In the address at St. Louis September 23rd 1905, above referred to President Eaton says, "to this (Alabama) Bar Association and its committee is, therefore, to be given the honor of the first step taken in this country toward uniform legislation in the law of negotiable instruments."

Persident Eaton says, that the law is now in force in twenty-seven (27) States and the District of Columbia.

It does not speak well for the influence of our Association at home that our own State is not one of the twenty-seven (27) States mentioned.

The negotiable instruments act recommended was published in full in the reports of this Association at the meeting of 1898, at pages 108 to 141 inclusive. Hon. W. O. Hart, Secretary of the Louisiana Commissioners for

the promotion of Uniform Legislation, writes, June 18th 1906), "It is remarkable that though your State was the first one to suggest that law, it has not yet adopted it."

### UNIFORM WAREHOUSEMEN'S ACT.

The conference of Commissioners on Uniformity of Legislation are now at work upon a draft of a law to be known as a Uniform Warehousemen's Act. (9th Annual Report, Board of Commissioners, R. I. January 1905, p. 5.)

### DIVORCE.

No progress has been made in the matter of the Uniformity of Law of Divorce since our last report. Even if the laws of the several States were uniform in every respect, not only as to the grounds of Divorce; but also as to procedure, the recent decision of the Supreme Court of the United States, (Haddock vs. Haddock, 26 S. C. U. S. Rep. p. 525; 201 U. S.) makes evident evils, which arise from the inability of the process of State Courts to cross State lines, and which no uniformity of law or procedure can ever correct.

The thanks of the Committee are due to Hon. W. O. Hart of Louisiana for a copy of the Report of the Louisiana delegates to the Congress on Uniform Divorce Laws, held in Washington City, D. C., February 19-22, 1906, together with the Resolutions adopted by that Congress. We attach the same as a part of our report.

It will be observed that the Congress agrees with our Committee in the conclusion contained in our report made July 1905, (p. 237), viz: "that the whole problem is too much affected by the close relation to religious ideas to make an amendment to the Constitution of the United States a practicable solution thereof." The first resolu-

tion adopted by the Congress of February 1906, is to the effect, that all efforts to secure the passage of a constitutional amendment, as a prerequisite to Federal divorce legislation, would be futile.

### CONCLUSION.

In conclusion your committee would recommend the adoption of the following two resolutions, viz:

First, Resolved that the committee on Legislation be and is hereby instructed to present to each branch of the Legislature of Alabama, the draft of a bill covering the uniform negotiable instruments law and to secure the enactment of the same into law.

Second, Resolved that the committee on Legislation be and is hereby instructed to present to each House of the Legislature of Alabama, the draft of a bill to establish a Board of Commissioners for the Promotion of Uniformity of Legislation in the United States, and to secure the enactment of the same into law.

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### "EXHIBIT"

#### A BILL TO BE ENTITLED AN ACT

To Establish a Board of Commissioners for the Promotion of Uniformity of Legislation in the United States.

Section 1. Be it enacted by the Legislature of Alabama, that, within thirty days after the passage of this act, the Governor shall appoint three suitable persons and they and their successors are thereby constituted "A Board of Commissioners for the Promotion of Uniformity of Legislation in the United States." Any vacancy in said Board by resignation, death or however otherwise arising, shall be filled by the appointment by the Governor, of a suitable person.



**Sec. 2** It shall be the duty of said Board to examine the subjects of marriage and divorce, insolvency, the descent of property, the execution and probate of wills and other subjects upon which uniformity of legislation in the various States and Territories of the Union is desirable, but which are outside the jurisdiction of the Congress of the United States; to confer upon these matters with the Commissioners appointed by other States and Territories for the same purpose; to consider and draft uniform laws to be submitted for approval and adopted by the several States; and generally to devise and recommend such other or further course of action as shall accomplish the purpose of this act.

**Sec. 3.** The said Board of Commissioners shall keep a record of all its transactions, and shall, at each session of the legislature, and may at any other time, make a report of its doings and of its recommendations to the General Assembly.

**Sec. 4.** No member of said Board shall receive any compensation for his services, but each member shall be repaid from the State Treasury, the amount of his actual traveling and other necessary expenses incurred in the discharge of his official duty, after the account thereof has been audited by said Board and by the State Auditor, and said Board shall keep a full account of its expenditures and shall report it in each annual report.

**Sec. 5.** This act shall take effect upon its passage.

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### **EXHIBIT.**

**Report of the Delegates to the Congress on**

### **UNIFORM DIVORCE LAWS**

**Held in Washington City, D. C. February 19 to 22, 1906.**

NEW ORLEANS, May 7, 1906.

*To His Excellency, Newton C. Blanchard,**Governor of Louisiana:*

Sir—In response to the invitation of the Governor of Pennsylvania calling your attention to the fact that the Legislature of that State had passed an act directing its Governor to invite the governors of the other States to appoint delegates to a congress to discuss the divorce question, you appointed the undersigned as such delegates, because they were already the Commissioners on Uniform State Laws for this State, and in your opinion therefore, the best for this Congress.

The Congress was held in the city of Washington from January 19 to 22, both inclusive, and was attended by two of the delegates, Mr. Kernan, owing to the press of other business, being unable to attend. Mr. J. R. Thornton was made chairman of the delegation, was appointed on one of the committees, and Mr. W. O. Hart, the other delegate, was appointed Chairman of the Committee on Credentials, an honor much appreciated by the delegates from this State,

Every State in the Union except Mississippi, Nevada and South Carolina appointed delegates, and of the forty-two States which made the appointments forty were represented during the sessions. The District of Columbia and New Mexico were also represented. The high character of the delegates may be shown by the fact that they consisted of governors, United States Senators, members of Congress, United States judges, State judges, bishops of the Catholic and Episcopal churches, clergymen of the Presbyterian, Methodist, Lutheran and Universalist churches, doctors, college professors, philanthropists, business men and lawyers. Out of the one hundred and twenty-nine accredited delegates, one hundred and two appeared. There were

in all seven sessions of the Congress; the attendance was large at each session, and the interest and enthusiasm of the highest order. A code of principles, a copy of which is hereto annexed, was adopted as a basis for a uniform divorce law, which will probably be presented at the next session of the Divorce Congress, to be held most likely in August in St. Paul. The curbing of the divorce evil is one of the live questions of the day, particularly the lessening of migratory and collusive divorces. Under certain circumstances divorce may be as necessary as marriage; but the evil in divorce procedure in some of the States is an evil which affects every other State. In Louisiana the courts can never acquire jurisdiction where parties come into the State for the purpose of procuring a divorce. If all States had the same law on this subject that we have—that the cause of the divorce must happen while the parties were domiciled in the State—migratory divorce would be a thing of the past. As no divorce law or form of procedure was finally adopted by the Congress, we have nothing at this time to recommend to the Legislature on the subject. We all expect to attend the next Congress, and believe that a permanent organization thereof will be effected, because the reform which the Congress has set out to accomplish will require years of laborious and patient effort in its behalf.

In closing, we desire to return our sincere thanks to Governor Pennypacker of Pennsylvania, the President of the Congress and the Pennsylvania delegates for many courtesies and the great consideration shown the delegates from Louisiana.

Respectfully submitted,

J. R. THORNTON,  
T. J. KERNAN,  
W. O. HART.

RESOLUTIONS ADOPTED BY THE NATIONAL CON-  
GRESS ON UNIFORM DIVORCE LAWS AT ITS  
SESSIONS AT WASHINGTON, D. C., FEB-  
RUARY 19-22, 1906.

I. AS TO FEDERAL LEGISLATION.

1. It is the sense of the Congress that no Federal divorce law is feasible, and that all efforts to secure the passage of a constitutional amendment—a necessary prerequisite—would be futile.

II. AS TO STATE LEGISLATION.

1. All suits for divorce should be brought and prosecuted only in the State where the plaintiff or the defendant has a *bona fide* residence.

2. When the courts are given cognizance of suits where the plaintiff was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief will not be given unless the cause of divorce was included among those recognized in such foreign domicile.

When the courts are given cognizance of suits where the defendant was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief by absolute divorce will not be given unless the cause of divorce was included among those recognized in such foreign domicile.

3. Where jurisdiction for absolute divorce depends upon the residence of the plaintiffs, not less than two years' residence should be required on the part of the plaintiff who has changed his or her State domicile since the cause of divorce arose.

Where jurisdiction for absolute divorce depends upon

the residence of the defendant, not less than two years' residence should be required on the part of the defendant who has changed his or her State domicile since the cause of divorce arose.

4. An innocent and injured party, husband or wife, seeking a divorce should not be compelled to ask for a dissolution of the bonds of matrimony, but should be allowed, at his or her option, at any time, to apply for a divorce from bed and board. Therefore, divorces *a mensa* should be retained where already existing, and provided for in States where no such right exists.

5. The causes for divorce existing by legislative enactment may be classed into groups that would be approved by the common consent of all the communities represented in this Congress, or at least substantially so. These cases should be restricted to offenses by one party to the marriage contract against the other of so serious a character as to defeat the objects of the marital relation; and they should never be left to the discretion of a court, but in all cases should be clearly and specifically enumerated in the statute. Uniformity in this branch of the law is much to be desired; but the evils arising from diverse causes in the different States will be very greatly abated if migratory divorces are prohibited.

6. While the following causes for annulment of the marriage contract, for divorce from the bonds of matrimony, and for legal separation or divorce *a mensa* seem to be in accordance with the legislation of a large number of American States, this Congress, desiring to see the number of causes reduced rather than increased, recommends that no additional causes should be recognized in any State; and in those States where causes are restricted no change is called for:

A.—Causes for Annulment of the Marriage Contract.

1. Impotency.

2. Consanguinity and affinity, properly limited.
3. Existing marriage.
4. Fraud, force or coercion.
5. Insanity, unknown to the other party.

**B.—Causes for Divorce—*a. v. m.***

1. Adultery.
2. Bigamy.
3. Conviction of crime in certain classes of cases.
4. Intolerable cruelty.
5. Wilful desertion for two years.
6. Habitual drunkenness.

**C.—Causes for Legal Separation, or Divorce, *a. m.***

1. Adultery.
2. Intolerable cruelty.
3. Wilful desertion for two years.
4. Hopeless insanity of husband.
5. Habitual drunkenness.
7. If conviction for crime should be made a cause for divorce, it should be required that such conviction has been followed by a continuous imprisonment for at least two years, or in case of indeterminate sentence, one year; and that such conviction has been the result of trial in some one of the States of the Union, or in a Federal court, or in some one of the countries or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment.

8. A decree should not be granted, *a. v. m.* for insanity arising after marriage.

9. In those States where desertion is a cause for divorce, it should never be recognized as a cause unless it is wilful and is persisted in for a period of at least two years.

10. A divorce should not be granted unless the defendant has been given full and fair opportunity by notice

brought home to him to have his day in court, when his residence is known or can be ascertained.

11. Any one named as correspondent should in all cases be given an opportunity to intervene.

12. Hearings and trials should always be before the court, and not before any delegated representative of it; and in all uncontested divorce cases, and in any other divorce case where the court may deem it necessary or proper, a disinterested attorney should be assigned by the court, actively to defend the case.

13. A decree should not be granted unless the cause is shown by affirmative proof, aside from any admission on the part of the respondent.

14. A decree dissolving the marriage tie so completely as to permit the remarriage of either party should not become operative until the lapse of a reasonable time after hearing or trial upon the merits of the cause. The Wisconsin, Illinois and California rule of one year is recommended.

15. In no case should the children born during coverture be bastardized, excepting where they are the offspring of bigamous marriages or the impossibility of access by the husband has been proved.

16. Each State should adopt a statute embodying the principle contained in the Massachusetts act, which is as follows: "If an inhabitant of this Commonwealth goes into another State or country to obtain a divorce for a cause which occurred here while the parties resided here or for a cause which would not authorize a divorce by the laws of this Commonwealth, a divorce so obtained shall be of no force or effect in this Commonwealth."

17. Fraud or collusion in obtaining or attempting to obtain divorces should be made statutory crimes by the criminal code.

## ANNUAL ADDRESS

BY JUDSON HARMON.

### "INDEPENDENCE OF THE JUDICIARY."

I recently made a visit to the county of Norfolk, England. Born and reared in a region where the log house is still to be seen and a citizen of a commonwealth which has barely begun to reckon its existence in centuries, I felt deeply the charm and inspiration of that ancient realm. Britons, Romans, Saxons, Danes and Normans had dwelt there, merging at last in the race, great from the blending of their varied qualities, which has flourished for nearly a thousand years.

There was Norwich, its capital, as it was also of East Anglia before King Alfred's time. As I sat in its old cathedral with the evening sunbeams lying soft on the Norman arches and the tombs of many generations around me, the music sounded far away and seemed to marshal again the slow procession of worshippers from the abandoned cloisters.

Then the old castle on the hill in the midst of the city, so strong that its holder dared defy the Conqueror himself, looked down on me as it did on my ancestors, but not as on them with the threat of its dungeons equipped with all the instruments of torture which ingenious cruelty could devise. These were to me merely reminders that they were no imaginary dangers against which our constitutions protect us by forever forbidding the infliction of cruel and unusual punishments and the compulsion of any man to give testimony against himself.

There, too, was the quarter settled by the weavers and spinners from Low Countries when they fled from per-



secution because of their faith, and this gave living meaning to the religious liberty which has become so much a matter of course with us.

Throughout the many centuries of its history that region has been fruitful of great men. But of them all the people seem proudest of two. I had forgotten, if I ever knew, that they were men of Norfolk—Edward Coke and Horatio Nelson. In the ancient town hall relics of both are sacredly preserved, among those of the former being records and papers in his handwriting when, at the beginning of his career, he was recorder, or local judge, of Norwich.

I understood at once the place the great admiral holds in the hearts of the people from whom he sprang, though he has been dead for a hundred years. But I was puzzled at first to account for that of the lawyer whose bones have lain in his native soil for almost three hundred years.

Heroism or success in battle still stirs the imagination of men as profoundly as when warfare was their chief occupation, but what can the lawyer's title be to such enduring remembrance? Surely it could not be Shelley's case, nor all the learning in the Reports and the Commentaries on Littleton. And his brutal prosecutions of poor Essex and Raleigh as Attorney General for Elizabeth and James, must have been atoned for in some way. Yes, in his old age in the House of Commons he fought the people's battles against monopolies and other wrongs and finally when seventy-five years old drew, carried and forced the assent of Charles to the Petition of Right, which, after nearly a score of renewed conflicts, led to the final establishment of Magna Charta and made what the Barons exacted from the King for themselves the equal birthright of every Englishman and his heirs forever.

But how came this lawyer to be called, in his old age, "without prayer or price," as he truly said, to represent the people of his native county from which he had so long been absent, sometimes being chosen by several counties at once? It was because, long before, he had stood, with a courage equal to Nelson's, for that without which Magna Charta and all the laws of the land would have no practical value to the people—an independent judiciary to do justice between man and man and between State and citizen, without fear or favor.

When the Court of High Commission, which originally had only ecclesiastical jurisdiction, undertook to carry out the King's wishes by trying criminal charges against citizens, here was a judge who dared issue writs of prohibition against its proceedings.

When, thus balked, the King proposed to try cases himself, and the judges of the realm were summoned to confirm this right, here was one to tell the sovereign he might sit with the judges, if he wished, as justice was administered in his name, but that the court alone could give judgment, because by the Great Charter and the statutes no man could be put to answer except by due process according to the ancient law of the land and that great and small alike must have and receive justice in the courts of the realm alone.

When the King expostulated with him for this decision he replied:

"True it is, please your Majesty, that God has endowed your Majesty with excellent science as well as great gifts of nature; but your Majesty will allow me to say, with all reverence, that you are not learned in the laws of this your realm of England, and I crave leave to remind your Majesty that causes which concern the life or inheritance, or goods or fortunes, of your subjects are not to be decided by natural reason. \* \* \* The law is the gol-

den met-wand and measure to try the causes of your Majesty's subjects, and it is by the law that your Majesty is protected in safety and peace."

And when the King in wrath exclaimed, "Then I am to be *under* the law—which it is treason to affirm," Coke replied, "Thus wrote Bracton 'The King should not be under any man but is under God and the law.'"

Sometimes the King "from personal liking or some mysterious reason wished to screen the most guilty parties from punishment," or to require the judges to attend him for consultation about proceedings in court. When asked what course he would take in such cases Coke replied, "When the case happens I shall do that which shall be fit for a judge to do."

He showed the same firm but courteous front to the attempted exercise of other alleged prerogatives by which it was sought to create offenses without law and otherwise interfere with the rights and liberties of the people.

The service thus rendered to all the men of his time and their descendants in all times did not lack the seal of martyrdom. The independent judge was summarily removed. He was persecuted. He was imprisoned in the tower. To keep him from sitting in Parliament, he was appointed sheriff of a county and, it being a penal offense to refuse to serve the King, he was compelled to bear the wand before the judges in procession and stand behind them as they sat.

It was not long before Scroggs, Jeffries and Saunders showed what a subservient judiciary is capable of and the Act of Settlement, which put an end to the reign of the Stuarts, set a bulwark around the independence of the judiciary by taking from the sovereign all power of removal. The judges were also by law no longer made to look to the crown for their compensation. And there

could be no further interference by the King with the course of justice in the British realm.

The rights thus secured to Englishmen were afterward denied to the Colonies. The King made orders allowing appeals to the royal governors and their councils even from verdicts of juries, and the manful resistance of the colonial courts by refusing to recognize such appeals helped set and keep alight the flames of American liberty.

Andrew Hamilton was the first American lawyer to achieve wide distinction. He did it by going from Philadelphia to New York to defend Peter Zenger whom the Royal Governor was prosecuting for libel. And Zenger's alleged offense was denouncing the governor for interfering with the administration of justice. This was fifty years before Erskine won his victories by the same defense—that the truth is no libel.

You will remember that the recital of wrongs in the Declaration of Independence includes interference by the King with the administration of justice and makes the judges dependent on his will alone for the tenure of their offices and the amount and payment of their salaries.

It is easy to trace in then recent history the origin of the safeguards thrown by our Federal and State constitutions around the independence of the judiciary. And he is short sighted indeed who will tolerate for a moment attempts to interfere with that independence because they take a different form from those which our ancestors contended.

The executive can no longer remove judges, but when he has the appointing power he may employ it with reference to questions which are likely to come before them for decision; he can give or withhold promotion; and his words have or can be given the wings of the morning. A governor was once generally censured for appearing

in a case before the Supreme Court of his State some of whose members he had appointed to fill vacancies.

The idea that government must be one of laws not of men is the foundation of the system which established and preserves for every man alike the supremacy of his own will over his person, property and pursuits, except so far as public order, safety and health require interference. To such interference limits are set which may not be passed by any power or any pretext whatever; and interference within those limits must be by laws of uniform application in whose enactment all have a voice.

In the evolution of this idea from theory into practice it was seen, at first dimly then clearly, that, as all agencies of government are human and must be left to employ the powers entrusted to them without direct control by the people, it was unwise to permit the agency which makes the laws to construe them, as against individual citizens. It was found equally unwise to entrust that power to the agency established to enforce the laws. The practical resourcefulness of the race which has shown the highest capacity for self-government supplied a third agency and gave it the exclusive right to hear and decide disputes between man and man and between government and citizen, and the sole power to determine, for that purpose, what the law is, whether written or unwritten, and how the subject of dispute is affected by it.

It may be suggested that the body which makes the written laws should know best what it meant by them, but the protection of the citizen requires that as against him the question be what is the fair and natural meaning of the law, and this must be left to an impartial tribunal. And it is settled that the Legislature cannot direct the courts what construction they shall place on the laws it

has enacted, except as to future cases as to which the direction has the effect of a new law.

So, it may be said, the executive duty of enforcing the laws includes that of construing them. As to laws of purely public effect this is true, and the vast enterprises and expenditures of our various governments are undertaken and made on executive construction of the laws alone. And it is an established principle that, unless the fundamental law so provide, the courts cannot be required to pass on the laws except in cases arising under them. But when it is proposed by virtue of law to lay hands on a citizen or on his property or on his business, the executive is bound to resort to the courts for the enforcement of the penalties without which there can be no law, so that the citizen shall have a hearing as to whether what he has done or failed to do has made him subject to them. Otherwise American executives have or may be given powers denied to Kings.

When the citizen may apply to the courts with respect to the exercise of police powers such as inspection and regulation, and whether and to what extent this right may be denied by law are not here pertinent questions.

It soon became plain that the men who from time to time constitute the judiciary of the country, to whom is confided the application of the laws to citizens, with respect to prosecutions and private disputes, must be made and kept free from every cause and influence likely to affect their impartiality; and the first requisite for this is independence.

So the common law, which is merely the recognition of the settled ideas and customs of the people, forbids interference in litigation by persons who have no natural interest in it and treats champerty and maintenance as offenses.

It also refuses to permit any one to call a judge to ac-

count for statements made or action taken by him officially. It will not allow his conduct or motives to be put in issue for purposes of suit no matter what they are charged to have been.

Laws have frequently been passed requiring the courts to perform administrative duties, beginning with that of 1792 for taking and certifying applications for pensions. But they have refused to comply, especially when the duty was to appoint officers with patronage, as in the case of the Board of Health in my own city.

The principal is recognized everywhere, though often not fully put in practice, that judges should be made independent of need by adequate salaries which can be neither raised nor lowered during their term of office. James Bryce, I think it was, speaking of the low salaries of some of our American judges, said that it may become a source of danger because human experience shows that power will seldom be long content to remain poor. Certainly no judge can properly devote all his faculties to the duties of his office who from necessity or otherwise engages in speculation or becomes interested in active business enterprises.

Of course the surest guaranty of judicial independence is the character of the judge himself. The training and traditions of the profession from which he comes do much, and if he be of the highest type he may be trusted to rise above all the conditions which surround him. There could be no higher proof of the character of our people and the government they carry on for themselves than the fewness of instances of unworthiness or unfitness among our judges which the tests of so many years of varied experience have disclosed. But as American life grows less simple the points of dangerous contact multiply and precaution becomes a higher factor of safety.

It has been claimed that the choice of judges by popular vote tends to impair their independence, but I do not think so. The electors have neither means, opportunity nor desire to interfere with the action of the judges they select. They can only refuse to re-elect when displeased, and, barring some rare instances like those of Judge Cooley in Michigan and Judge Swan in Ohio, such refusals have usually been just when not due to mere political causes. When the electors, however, act through political organizations in choosing judges there is some peril, especially when those organizations are allowed to fall under the control of a few men or a single man whose purposes generally are, or soon become, selfish or corrupt. These men really choose the judges as well as other public officials and naturally come to regard them all alike as subject to orders. One of the disclosures of a recent investigation by a legislative committee in Cincinnati was that one of these political monarchs, whose nod has long made and unmade judges, had sent for some of them and told them his wishes as to a case which was then in their hands for decision.

I trust that the era of "bosses" has passed away. But even so I hope the time will come when judges will be elected without the intervention of parties, because cases must frequently come before them from which it is impossible to eliminate political considerations, and the effect of these, while it may not be entirely escaped, must certainly be less when the judges are not nominated as party candidates. Then, with terms long enough to enable the people to form a just opinion of the men who administer justice in their name, we shall have a judiciary as independent as it can be made. But it must always weaken confidence in our judiciary to have judges taking part in political assemblies or discussing in public ques-



tions upon which the parties are or may soon be in conflict.

A lawyer I know once told me of a case he had tried in a rural Ohio county in which after he had argued a motion for a new trial the judge, who was an old acquaintance, calling him aside said, "Tom, you are entitled to a new trial and ought to have it. But the people out here won't have a judge who ever sets aside the verdict of a jury." So he overruled the motion. I do not doubt the truth of this incident, but while it gives conclusive proof of the cowardice of the judge it has not even the force of hearsay evidence against the people of his district. I know his judicial career was brief.

I am aware that what I have said is open to the charge of being trite. I have told you nothing you did not already know or might not readily have known. Perhaps this was bound to result from the choice of a subject. My apology, if one be required, is that my object has not been to instruct but rather to remind. Under our form of government, which cannot be successfully carried on unless every one does his share of public duty, our troubles arise less from ignorance than from inattention and inaction.

These are times when every one, especially lawyers, should look beyond the impulse of the moment lest we pay, and pay needlessly, too high a price for the gratification of present wishes, just and praiseworthy though they be.

On every hand men have made haste to be rich and have not been innocent. It is written that they shall not be innocent. Corporate officers have forgotten that they are trustees for the stockholders; and both have forgotten that corporations with public franchises are trustees for the people. Or if they have not forgotten they have not cared. Fraud and graft have burrowed deep

in private enterprises. Executive and legislative officers have been convicted and sentenced for infamous official crimes. The people are aroused by reason of numerous frauds and impositions practiced on them, and by the insolent parade and misuse of wealth by persons who utterly lack the character and training necessary to qualify them to be entrusted with the control of wealth.

Under such conditions the temptation to seek or sanction irregular justice is strong, and the immediate result is apt to hide the more remote and lasting consequences. Ability to foresee these and act in view of them is what distinguishes nations which are capable of self-government from those which are not.

It surely has not been the fault of the courts that public or private wrongs have been committed, nor that these have not been discovered and punished. Yet one cannot help observing a disposition in some quarters to discredit the courts or at least to regard them as rather an obstruction to the free play of the forces of reform. But this is simply going back to the times of which I have spoken. When citizens are to be affected, no matter who they are nor what they are charged with, the courts are intended to be an obstruction against both legislative and executive zeal, however good the motives which inspire it or the object in view. The usefulness of the judiciary would vanish if it were not such an obstructive force at all times and under all circumstances.

The government and the people of the entire country were convinced that Aaron Burr was a traitor and demanded his punishment. The court which tried him held that no man's life can be forfeited in free America for what he feels, or thinks or says; but that treason consists of acts alone. Fifty years later when the civil war filled the air with charges of treason the sons of men whose wishes were foreclosed by that decision found

refuge under it. And never can there be repeated on our soil the bloody scenes which run through English history.

Again, when Lamdin P. Milligan was tried and condemned to the death for treason by a military commission in Indiana during our civil war, and his case in *habeas corpus* came on while the entire people were clamoring for a victim of their wrath for the murder of President Lincoln, the court planted another land-mark of liberty. Guilty Milligan may have been, but no military commission had the right to try him because he was not in the service and lived in a state where the courts were open for the administration of justice under due process of law.

The precedents which return to plague or harm us are generally those which run at the time with our desires. The precedents which abide with us and our children for the safeguard and support are often those which at the time conflicted with our wishes.

No doubt there are some changes which might well be made in the administration of our criminal laws. Perhaps the presumption of innocence has been sometime pushed too far, especially in cases of persons known to be addicted to crime. But no offense is too great or threatening to be punished by the orderly procedure of our courts. And no good is desirable enough to be obtained at the sacrifice of the safeguards which the judiciary maintains around the individual rights of all the people whatever their station, means or condition.

Patience is one of the great moral and religious qualities. We are thus enjoined: "Giving all diligence, add to your faith virtue; and to virtue knowledge; and to knowledge temperance; and to temperance patience." It is through "faith and patience" that we are to "inherit the promises."

But patience is also the cardinal requirement of a free

people. They must often endure delays and submit to what seems at the time to be needless precautions. Yet this is simply part of the price they have agreed to pay and must pay for their general security. Every time our patience gives way we weaken the defenses we may soon need; and if not ourselves, then our children. And we have no excuse for yielding to the temptations of haste which sweep aside all checks and limitations to reach its end, because in all our history patience has never failed to bring its rewards in due season, nor haste to exact its penalties.

REPORT OF COMMITTEE ON LOCAL BAR ASSOCIATIONS.

BY W. T. SANDERS, Chairman.

*Mr. President and Gentlemen of the Alabama State Bar Association:*

In order to ascertain the number of local Bar Association in the State, and their condition, I, as Chairman of your Committee on Local Bar Associations, have addressed a letter to members of the profession, at all places in the State, where it seemed at all likely that a Bar Association would or could exist. I addressed seventy of these letters to sixty-seven different localities, and the inquiries therein contained were:

1. Is there a local Bar Association in your place?  
If so, what proportion of the lawyers belong to it?
2. Is it active and helpful?
3. Are the ethics of the profession promoted by your Association?
4. What is your opinion of the value of local Bar Associations?
5. Any suggestions that you may make in reference to the subject of local Bar Associations would be appreciated.

To these letters and similar verbal inquiries, 40 replies were received; and from these replies it appears that 14 cities and towns in Alabama have local Bar Associations, and 26 have none.

The following table shows where local Bar Associations in this State exist; and, where there are no such organizations:

Places where local Bar Associations exist:

1. Montgomery.

2. Birmingham.
3. Scottsboro.
4. Attalla.
5. Bessemer.
6. Jasper.
7. Dadeville.
8. Wetumpka.
9. Gadsden.
10. Mobile.
11. Selma.
12. Luverne.
13. Huntsville.
14. Anniston.

Places where local Bar Associations do not exist:

1. Sylacauga.
2. Greenville.
3. Carrollton.
4. Bay Minette.
5. Talladega.
6. Uniontown.
7. Decatur.
8. Lafayette.
9. Demopolis.
10. Pell City.
11. Ozark.
12. Elba.
13. Roanoke.
14. Grove Hill.
15. Florence.
16. New Decatur.
17. Jackson.
18. Union Springs.
19. Troy.
20. Piedmont.
21. Lineville.

- 22. Opelika.
- 23. Tuscumbia.
- 24. Abbeville.
- 25. Athens.
- 26. Sheffield.

It cannot be positively stated that there are no other local Bar Associations in the State than those appearing in the above table; nor that the above table contains a list of all the places where such associations do not exist, the table purporting to set forth only the information which has been gained from the replies to the above mentioned letters, and from personal inquiry.

About 60 per cent. of the inquiries made were answered; but it is doubtless safe to assume that a large majority, if not all, of the places from which no replies were received, have no bar associations.

As the activity and helpfulness of the associations in those places where they do exist, the reports are about evenly divided, about one-half reporting active, healthy organizations, the other half reporting a state of peaceful repose.

In those cases where activity and helpfulness are reported, this question in the main is merely answered in the affirmative, the lines of activity and helpfulness not being indicated. In some cases the usefulness of the association is made to consist in the maintenance of a local law library; but in far greater number of cases activity seems to be limited to an occasional meeting for the purpose of endorsing a local (sometimes a foreign) candidate for office; and for the burial of a departed member.

From a reading of all the replies to this question the conclusion is apparent that the greatest usefulness consists in the organization and maintenance of local libraries. Not a single instance is reported to me of a local

bar association having instituted a prosecution for the violation of its rules; or for an offense against the ethics of the profession.

In response to the question as to whether local bar associations promote the ethics of the profession, the prevailing tone of the replies is that they do; but this result seems to be brought about by the mere passive existence of the association, rather than from any active operations, or from any example which has been made of offenders,—the idea being that the would be offender is somewhat deterred by the existence of an organization which might put its machinery in motion against him. It must be confessed, however, that the restraining influence which proceeds from such a consideration will constantly diminish in the case of a non-active organization.

Some of the replies to this question were pointedly to the effect that the associations did nothing to promote the morals and ethics of the profession.

With very few exceptions, the replies in a general way express the opinion that local Bar Associations were good things, and when properly conducted could be made productive of much good, and quite a number expressed an intention and willingness to organize associations in their communities.

On the whole it must be admitted that the condition of local Bar Associations in Alabama is not satisfactory, and their future is not encouraging.

Where they exist, they rarely perform the services for which they were designed.

One of the greatest obstacles seems to be the difficulty in maintaining a uniform scale of fees, and the unwillingness of many members to submit the question of their compensation for services, to any arbitrament except their own judgment in each particular case. Many



assert that the question of a fee is strictly a matter of business between lawyer and client to be regulated by the extent and value of service to be rendered, and their mutual agreement; and that so varying is the nature, extent and importance of the service in each case that no scale of fees can be arranged so as adequately to reach the difficulties.

These moreover contend that the reputable lawyer does not need to be bound by such an arrangement; and that the disreputable cannot be.

Many younger members of the profession are averse to becoming bound by a scale of fees, upon the idea that they would be arranged upon the basis of adequate compensation for the older and most experienced members and that the young lawyer would be eliminated, largely, as he cannot expect to receive the compensation of his more experienced elder brother at the bar for the same service.

It must not be overlooked, too, that the public is disposed to view rather unkindly the existence of an organization held together, for the most part, for the purpose of maintaining a scale of fees.

I think it is, without doubt, hesitation at submitting to fee scales, and sensitiveness to criticism of such an arrangement that deters the profession, both the old lawyer and the young lawyer from becoming members of Bar Associations; and which causes almost every association which is organized to number among its members only a portion of the bar of that community.

I am aware that it is generally considered the prime duty of a local Bar Association to establish a minimum scale of fees, and that an association without a scale of fees is quite like Hamlet with Hamlet left out; but I venture the opinion that this difficulty can be surmounted, and that a successful bar association can be conducted

without the establishment of a fee system; and, as this seems to be the rock upon which the success of the organization of such associations has split, I am ready to declare that it is my belief, that, in order to secure the general success of the movement, it is best to eliminate from the rules of the local associations a prescribed scale of fees.

Of course the question of undercutting is necessarily involved in the ethics of the practice of law, and, the rules of any association must deal with this as an offense, where a lower fee is *knowingly* asked, for the purpose of securing the business from a brother member of the bar.

But after all the question of fees is very likely to take care of itself, no difficulty arises at this point in reference to the larger business conducted by the profession. The client with business of importance usually consults the lawyer of his choice without any reference to a scale of fees; and, I believe, that it is safe to say that a very large percentage of all legal business of any important character is plead without reference to bar fees, and at a considerably higher compensation to the attorney performing the service, than the minimum agreed upon by any bar association.

If the profession will stand for the highest ethics, and make them a living principle in the conduct of business, the fee difficulty will vanish, so far as it constitutes a hinderance to the successful operation of local associations.

If the local Bar Associations of Alabama will make the prime purpose of their existence to be, to incorporate into the practice of law in each community the splendid code of ethics promulgated by this State Association, then will they discharge their highest function, and justify their existence.

The Code of Ethics of this State Association should be incorporated into the Constitution and By-Laws of each local association.

An attorney cannot familiarize himself with the exalted rules of conduct prescribed in this code without becoming a more worthy member of his profession.

Its principles are all sufficient, and the practice of these principles will stimulate a fine sense of honor and integrity, of responsibility, to client, society and government, of duty to brethren and will elevate the profession of the law to the dignified station which it is due and which it deserves to occupy.

The inculcation of these high principles until they shall become the recognized rules of conduct in the practice of law will do far more towards preventing the disreputable custom of undercutting or under-bidding the reasonable fee of a brother lawyer, or the exacting of unreasonable compensation from clients, than any number of specific rules and regulations in reference to fees.

Soliciting business, employing runners, and claquers and encouraging litigation can have no place where this code of ethics is observed.

As line upon line, and precept upon precept is upon high authority declared to be good, it has occurred to me that it would be wholesome to hang in a conspicuous place in every court room in Alabama, a printed copy of the code of ethics of this Association, where it will easily catch the eye of court, attorneys, jury, and public. I suggest that this Association by resolution sanction this idea, and that some committee appointed for the purpose, or the Secretary of this Association take up this matter with the residents of local associations where they exist, or in such manner, as they or he, shall see fit, to the end that forthwith every court house in Alabama shall have

conspicuously posted a copy of this code. I believe that in doing this we shall perform a good service to the profession and to the public. It is highly proper that it be made known to the profession at large and to the general public, for what we stand.

It is painful to note that there is much complaint of unworthy practice and methods in our State. It is not to be hoped that this condition will not likely continue in a more or less degree for all time.

A firm determination, however, on the part of each member of the profession, who, in fact, regards its worthy aims, to do his part towards weeding out the unworthy, however unpleasant the task and duty, will undoubtedly diminish the evil, and bring about healthier conditions.

A suggestion has been made to me by a distinguished member of the bar in this State, which I approve, and submit for your consideration; and, that is, that this Association appoint a committee which shall sit during the year at such places and times as it may determine, armed with inquisitorial power, and authorized to summon before it, members of the bar, and such other witnesses, as it may require, with power to examine upon honor, or upon oath, in reference to any violation of the ethics of the profession, and to report its findings to this Association for its action. Some legislation will doubtless be required to give such a committee the powers it should possess for the accomplishment of its purposes. The legislation required could no doubt be obtained at the approaching session of the Legislature.

Assuredly, a faithful and courageous performance of its duties by such a committee would elevate the tone of the profession in our State; and would manifest to the public, that those of the profession who are worthy of

their high calling are zealous for the honor of themselves and their brethren.

In conclusion I wish to state that I have not had an opportunity to confer with the other members of this committee since the preparation of this report, and do not fasten upon them responsibility for the views herein expressed.

## REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

BY J. M. CHILTON, Chairman.

*Mr. President and Gentlemen of the Bar Association:*

The Committee on Jurisprudence and Law Reform desires to call the attention of the Association to the necessity for legislation, or some action, *corrective of the growing tendency in our Supreme Court to dispose of appeals otherwise than upon the merits.*

The right of appeal for a favored right—so highly regarded as to be protected in terms by the organic law of the State.

It follows that all rules of practice should receive a *liberal construction*, favorable to the right, as distinguished from a *strict construction*, in denial of the right.

Every lawyer having a considerable acquaintance with the decisions of our Supreme Court must have observed the tendency of those decisions in the latter direction.

The first marked evidence of this tendency appeared, when the court declined to revise rulings on demurrers on the ground that although the judgment theory disclosed the disposition made of the demurrers,—as that they had been over-ruled or sustained, there were lacking proper “words of judgment” such as, “It is considered and adjudged by the court that,” etc., etc.

Without reference to the soundness of the proposition that interlocutory rulings on demurrer must be made to appear with all the formality attending the final judgment, even to “words of judgment,” it is sufficient to say that if such had ever been the practice in Alabama, it had so long ceased to be the practice that its announcement was a great surprise to the Bar, and that the application

of the new rule to pending causes, doubtless resulted in the loss of valuable property rights to many persons.

Another notable illustration of the tendency, is in respect to Bills of Exception.

Certainly there should exist, at this late day, no room for doubt or uncertainty in the practice on so important a subject.

But uncertainty and doubts not only exist but have recently increased to the extent that the average practitioner is always uncertain whether his bill will "hold."

Difficulties in respect to Bills of Exception have arisen in a variety of forms: The Statute of the Code of 1876,—Section 3113 provided: "No Bill of Exceptions can be signed after the adjournment of the court during which the exception was taken, unless by consent or agreement of council in writing except in such cases as is otherwise provided."

Among the Rules of Practice adopted by the Supreme Court December 5th, 1876, was the 30th rule reading as follows:

"In all circuit and inferior courts of common law jurisdiction, bills of exceptions may be signed by the presiding judge at any time during the term at which the trial or proceeding is had, or, by written consent of the parties, or their counsel, filed in the cause, at any time before the next succeeding term of such court, and not afterwards."

Pretermittting the inquiry whether the Supreme Court had the power to adopt that part of the rule of practice limiting the time of signing such bills until the "next succeeding term of such court," the rule was in harmony with the existing statute.

Subsequently a new statute was adopted, forming Sections 616-620 of the Code of 1896, providing in substance that no bill should be signed after adjournment of the

court unless by consent or agreement of counsel in writing, except that the court might in term-time fix a time within which the bill might be signed and that the judge in vacation might extend such time.

It was also provided that parties or their counsel might by agreement in writing entered into in term-time, fix a time within which the bill might be signed, and might in like manner in vacation, extend such time.

By Section 620 it was provided: "The time allowed for signing a bill of exceptions must not be extended *beyond six months* from the adjournment of the court."

Here then we have a rule adopted in 1876, in harmony with the then statute, providing that the time for signing such bills should not be extended beyond the next term of the court, and a later statute providing that the time for such signing should not be extended beyond six months *after the adjournment* of the term in which the case is tried.

As some of our circuit courts meet every six months and some oftener and as quarterly terms are usually provided in our city courts, any construction seeking to harmonize the later statute and the 80th rule, would necessarily determine that when the Legislature fixed six months as the time within which bills might be signed in all cases, it really meant that the limit should be five months in one county, four in another, three in others and two in still others—the statute changing to suit the difference in the terms of the several courts.

Yet it was so held, and a number of cases were disposed of by this construction—some of them very important cases.

It would be surprising if the Legislature had held that the later statute was in conflict to the rule and repealed it. But the Legislature did not appear to have any of those grave doubts, and so the court must therefore, on the



idea of favoring the right of appeal, have given the benefit of the doubt to appellants in pending causes.

Construing the provision of the same statute authorizing an extension of the time by the judge in vacation, it was held that orders made in vacation, *signed by the judge*, but reciting that it was ordered "by the court," etc., were invalid, because made by the court in vacation and not by the presiding judge.

As the order was signed by the judge, might it not well have been taken to indicate his consent to the extension? Was there any necessity in such cases for a strict application of the distinction between the court, and the judge of the court? Many valuable rights were doubtless lost by this technical construction of the statute.

Cases have arisen where, although the bill purported to be signed by the presiding judge within the proper time, affidavits were received in impeachment of the facts so certified by the judge.

In later cases, however, it seems this rule has not been followed—with what comfort to the parties whose causes were lost by the previous rulings, need not be stated.

Much uncertainty prevails in respect to the necessity of setting out the evidence or the substance of the evidence in such bills. The rule has been that the giving or refusal of the affirmative charge would not be revised unless the bill contained all the evidence or the substance of all the evidence. But with what fullness must the evidence be transcribed? It is held that a literal transcription of the stenographer's notes is not permissible. It has been also held that, short of this, a bill may state the evidence with such prolixity as to be objectionable.

Granting that it is difficult to formulate a statute that would settle the question, it cannot fail to be observed that the general tendency has been to solve doubts in such matters against the validity of the bill.

By another and recent ruling it has been held that appeals will be dismissed unless the record affirmatively discloses the organization of the trial court.

As matter of good practice this doubtless should appear; but when the point is made for the first time by the court, *ex mero motu*, or by the appellee after the submission of the cause for decision, it would seem the court should, preferably, restore the cause to the docket in order that the record might be properly amended, rather than dismiss the appeal.

It is not a violent presumption that if a court of general jurisdiction exercised such jurisdiction in the rendition of a judgment, it was properly organized for that purpose; and when the parties have submitted the cause for decision without objection, it would appear only just to the litigants, we repeat, that some opportunity should be given to amend the record when the court itself or the appellee raises the objection after submission.

The instances cited are by no means the only ones in which decisions upon the merits have been prevented by rulings upon doubtful questions of practice. Those stated are illustrative of many others.

Where questions of practice arise which have not already been clearly settled, the correct and just policy would seem to be to formulate further distinct rules for future guidance, rather than to apply the first construction to pending causes.

The percentage of cases that go off on questions of practice, is very large at best,—a condition very much to the discredit of an enlightened civilization; but certainly the tendency should be in the direction of lessening the evil by construing orders and statutes regulating the practice, in support of the appeal, rather than against it, when such a construction is possible.

## AN ACT

To amend Section 598, 599, 600, 601, 603 605, 606 and 610 of the Code of Alabama. Be it enacted by the Legislature of Alabama:

Section 1. That Section 598 of the Code of Alabama be, and the same is hereby amended so as to read as follows: The Alabama State Bar Association, or the Central Council thereof, has authority to institute and prosecute, or cause to be instituted and prosecuted, in the name of the State of Alabama, the proceedings herein prescribed for the suspension or removal of an attorney.

Sec. 2. That Section 599 of said Code be, and the same is hereby amended so as to read as follows: The accusation must be in writing, and when the prosecution is instituted by the Alabama State Bar Association, or the Central Council thereof, a written statement signed by the President of said Association, or the Chairman of said Council, and attested by the Secretary of said Association, accompanied by written affidavit of any person or persons making charges for suspension or removal of such attorney, if any, taken before any officer authorized by law to administer oaths within or out of the State, setting forth the facts upon which the same may be based, shall be delivered by the Secretary of said Association to the Solicitor of the Circuit in which such attorney resides and thereupon, or when the proceeding is taken by the court of its own motion, the Solicitor of said Circuit shall draw up such accusation, citing the accused to appear before said Circuit Court, or City Court, or court of like jurisdiction, on a day named therein, and moving the court for the suspension or removal of such attorney, and have the same served by the sheriff of the county of such attorney's residence, by leaving a copy thereof with the accused.

Sec. 3. That Section 600 of said Code be, and the same is hereby amended so as to read as follows: If the proceedings are upon the information of an individual, the accusation must be in writing, setting forth the facts upon which the charges are based, verified by the oath of such individual, or some other person, taken before any officer authorized by law to administer oaths in or out of the State, that such facts are true, and must be presented to and filed in said Circuit Court, or City Court, or court of like jurisdiction, accompanied by security for costs to be approved by the judge thereof.

Sec. 4. That Section 601 of said Code be, and the same is hereby amended so as to read as follows: When the accusation is made by an individual, the Circuit Court, or City Court or court of like jurisdiction, must if of opinion that the accusation would, if true, furnish grounds of suspension or removal of such attorney, make an order requiring the accused to appear and answer the same at a specified day during that, or the next term, or at any other time, when the court can hear and determine the same, a copy of which, together with a copy of the accusation, must be served upon the accused; provided, that if such order is made, or proceedings are instituted by the court of its own motion, or as provided by Section 2 of this Act ten days before any term of the court, or before the adjournment thereof, such accusation must be made returnable and be heard during said term, unless continued for good cause by the court, upon such terms as it may impose.

Sec. 5. That Section 603 of said Code be, and the same is hereby amended so as to read as follows: The accused may answer such accusation, either by objecting in writing to the sufficiency thereof, or by denying the truth of the facts alleged or setting forth the facts of his defense, which said answer as to facts, by denial or otherwise,

must be in writing, signed by the accused and verified by his oath, and the accusation, objections and answer in said proceedings are hereby made of record therein as in other civil suits or proceedings in said court.

Sec. 6. That Section 605 of said Code be, and the same is hereby amended so as to read as follows: If the accused pleads guilty, or fails or refuses to answer the accusation, the court must proceed to judgment of suspension or removal: if he answer the accusation, the court must immediately, or at such time as it may appoint, proceed to try the same, either side having the right to demand a trial by jury; if no jury is demanded, the court in trying the same shall make and file a statement of the facts established by the evidence, and if the jury is demanded, the jury must make a special finding of the facts, upon issues of facts submitted by the court, and upon such statement of facts by the court, or special findings of facts by the jury, the court must render judgment of acquittal or suspension, or removal, of the accused, as such facts may warrant; provided, however, that such accused attorney may stop or prevent such prosecution by a surrender of his license as an attorney in all the courts of the State of Alabama, a record of which surrender shall be made in the Supreme Court of said State.

Sec. 7. That Section 606 of said Code be, and the same is hereby amended so as to read as follows: The proceedings when instituted by the court of its own motion, or when the written statement hereinbefore provided for has been presented by the Alabama State Bar Association, or its Central Council, to the Solicitor of the Circuit, in which the accused resides, must be conducted in the name of the State, and when on the information of an individual in the name of the State upon the information of such person; and in all cases the Solicitor of said Circuit shall appear and sustain such accusation, and be responsible

for the faithful performance thereof as of other official duties required of him by law; provided, however, that the court may, upon the motion of said Solicitor, and upon good cause shown, at any time require said The Alabama State Bar Association to give security for the costs of such proceedings to be approved by the court within ten days from notice to the Secretary of said Association, by said Solicitor, and the hearing of said cause shall be postponed for that time, unless such security shall be sooner given.

Sec. 8. That Section 610 of said Code be, and the same is hereby amended so that the same shall read as follows: Either party may appeal to the Supreme Court from any adverse judgment rendered by said Circuit Court, City Court, or court of like jurisdiction, in said proceeding, at any time within thirty days after such judgment, in the manner now prescribed by law for appeals in civil cases, and may reserve by bill of exceptions any question proper to be reserved in civil causes and the judgment rendered in said proceeding, and the Supreme Court may affirm, modify or reserve such judgment, or render such judgment in such proceeding as the Circuit Court, City Court, or court of like jurisdiction, should have rendered.

Sec. 9. Whenever any disagreement or controversy arises between an attorney at law and any other person, respecting the amount of the compensation to which he is entitled by contract or otherwise, and his retention of the same out of any funds in his hands, such attorney may by motion in the Circuit Court, City Court, or court of like jurisdiction, of the county of his residence of which such other person shall have notice, obtain an order of said court that a certain amount is due him under such contract, or would be reasonable compensation for his services, and when such motion is made and order obtained, such attorney shall not be subject to prosecution, suspension or removal under this act, or other pen-

alty therefor; but nothing herein contained shall affect or destroy any civil action to which any person would be entitled against such attorney respecting the same or any criminal prosecution to which the accused would be otherwise liable.

Sec. 10. All laws and parts of laws in conflict with this act are hereby repealed.

Approved Oct. 3, 1903.

## CONSTITUTION.

## ARTICLE I.

The object of the Association shall be to advance the science of jurisprudence, promote the administration of justice throughout the State, uphold the honor of the profession of the law, and establish cordial intercourse among the members of the Bar of Alabama. This Association shall be known as "The Alabama State Bar Association."

## ARTICLE II.

Any person shall be eligible to membership in this Association who shall be a member of the Bar of the State in good standing, and who shall also be nominated as hereinafter provided.

## ARTICLE III.

The officers of the Association shall consist of one President, five Vice-Presidents, a Secretary, a Treasurer, a Central Council, and an Executive Committee, which committee shall be composed of five members, one of whom shall be the Secretary and Treasurer of the Association.

Each of these officers, council and committee, shall be elected at each annual meeting by the Association for the year next ensuing, but the same person shall not be elected President two years in succession. All such elections shall be by ballot. The officers elected shall hold office until their successors are elected and qualified according to the Constitution and By-Laws.



**ARTICLE IV.**

The Central Council shall consist of five members, and shall be at all times an advisory board for consultation and conference when called on for that purpose by the President or any Vice-President who may for the time being be acting as President.

**ARTICLE V.**

The President, by and with the advice and consent of the Central Council, may establish a Local Council in any county of this State by issuing a warrant to that effect, naming therein the persons composing such Local Council. Each Local Council shall consist of not less than three nor more than seven members. No person shall be eligible to appointment as a member of any Local Council who is not at the time a member of this Association.

The Central Council and Local Councils shall have full power to nominate applicants to become members of this Association.

**ARTICLE VII.**

Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge. One year's annual dues shall be paid in advance by each member at the time of his election.

By-reading board of the Association of 1880-1881

Association by a majority of the members present.

#### ARTICLE IX.

The following committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each:

1. On Jurisprudence and Law Reform.
2. On Judicial Administration and Remedial Procedure.
3. On Legal Education and Admission to the Bar.
4. On Publication.
5. On Grievances.
6. On Correspondence.
7. On Legislation.
8. On Local Bar Associations.

A majority of the members of any committee, or of the Central Council who may be present at any meeting of such committee or council, shall constitute a quorum for the purposes of such meeting. Vacancies in any office provided for by this Constitution shall be filled by appointment by the President, and the appointees shall hold office until the next meeting of the Association.

#### ARTICLE X.

The Central Council and Executive Committee shall each perform such duties as may be assigned to them by the President, or as may be defined by the By-Laws, except as herein otherwise directed.

#### ARTICLE XI.

This Association shall meet annually at such time and

place as the Executive Committee may determine, and those present at such meeting shall constitute a quorum. The Executive Committee shall require thirty days' notice of the time and place of meeting, by publication in a newspaper, to be given; which publication shall be made by the Secretary.

## ARTICLE XII.

The President shall open each annual meeting of the Association with an address in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several States and by Congress during the preceding year.

## ARTICLE XIII.

The Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than thirty members are present.

## ARTICLE XIV.

Each Local Council shall perform such duties as it may be called upon to perform by the President, or as may be defined by the By-Laws.

## ARTICLE XV.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association or in his profession, on conviction thereof, as may be prescribed by the By-Laws.

## ARTICLE XVI.

The Constitution shall go into immediate effect. This Association shall be incorporated under the laws of the State of Alabama as soon as practicable, and until such incorporation all money and property of said Association shall be vested in the President and Treasurer, as Trustees thereof, who shall pay over and deliver the same to said corporation as its property as soon as the corporation is credited by law.

## ARTICLE XVII.

The two offices of Secretary and Treasurer may be filled by one person, if the Association shall, by its By-Laws, so determine.

**BY-LAWS.**

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**I.**

The President shall preside at all meetings of the Association, and in case of his absence one of the Vice-Presidents shall preside.

**II.**

The Secretary shall keep a record of all meetings of the Association, and all other matters of which a record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association with the concurrence of the President. He shall notify the officers and members of their election, and shall keep a roll of the members, and shall issue notices of all meetings.

**III.**

The Treasurer shall collect, and, under the direction of the Executive Committee, disburse all funds of the Association; he shall report annually, and oftener if required; he shall keep regular accounts, which shall be at all times open to inspection of the members of the Association. His accounts shall be audited by the Executive Committee. Before discharging any of the duties of his office, the incumbent shall execute a bond with good and sufficient surety, to be approved by the President, payable to the President and his successors in office, in the sum of five thousand dollars, for the use of the Association and conditioned that he will well and faithfully perform the duties of his office so long as he discharges any of the duties thereof.

## IV.

The Executive Committee shall meet at least once a month, except in July, August and September. They shall have power to make such regulations, not inconsistent with the Constitution and By-Laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of their proceedings, which shall be read at the ensuing meeting of the Association; and it shall be their duty to present business for the Association. They shall have no power to make the Association liable for any debts amounting to more than half the amount in the Treasurer's hands in cash, and not subject to prior liabilities. They shall perform such other duties as are required of them by the Constitution, or as may be assigned to them by the President.

## V.

The Central Council shall perform all such duties as may be required of them by the Constitution or as are assigned to them by the President, but they shall not be required to keep a record of their proceedings, nor shall they make any report to any meeting of the Association, unless such report is required by the Association, and then only as to the particulars about which they are required to report; and the provisions of this section shall apply also to Local Councils.

## VI.

At each annual, stated or adjourned meeting of the Association the order of business shall be as follows:

1. Reading of minutes of preceding meeting.

2. Address of the President.
3. Report of the Treasurer.
4. Report of the Executive Committee.
5. Elections, if any, to membership.
6. Reports of Standing Committees.
7. Reports of Special Committees.
8. Election of Officers and Appointment of Committees.
9. Miscellaneous business.

This order of business may be changed by a vote of the majority of the members present.

The parliamentary rules and orders contained in Cushing's Manual, except as otherwise herein provided, shall govern all meetings of the Association.

## VII.

If any person elected does not, within one month after notice of his election, signify his acceptance of membership by a letter to the Secretary to that effect, and by payment of his admission fee, he shall be deemed to have declined to become a member.

## VIII.

In pursuance of Article IX of the Constitution, there shall be the following Standing Committees:

1. A Committee on Jurisprudence and Law Reform, who shall be charged with the duty of attention to all proposed changes in the law, and of recommending such as in their opinion may be entitled to the favorable consideration of the Association.
2. A Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the working of our judicial system, the

collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending, from time to time, to the Association such action as they may deem expedient.

3. A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what change it is expedient to propose in the system and mode of legal education, and of admission to the practice of the profession in the State of Alabama.

4. A Committee on Publication, who shall be charged with the duty of examining and reporting, when so required by the Association, upon matters proposed to be published by its authority.

5. A Committee on Grievances who shall be charged with the hearing of all complaints that may be made in matters affecting the interest of the legal profession and the practice of law, and the administration of justice, and to report the same to this Association, with such recommendations as they may deem advisable; and said committee shall, in behalf of the Association, institute and carry on such proceedings against offenders, and to such an extent as the Association may order, the cost of such proceeding to be paid by the Executive Committee out of moneys subject to be appropriated by them.

6. A Committee on Correspondence, who shall be charged with the duty of corresponding with the officers and committees of other Bar Associations for the purpose of causing action relative to law questions of national importance.

7. A Committee on Legislation, who shall be charged with the duty of ascertaining and reporting to each meeting of the Bar Association such legislation as it may approve of and consider necessary and proper to carry into effect the suggestions contained in the reports of the various committees, and papers read at any previous meeting, and it shall be the duty of said committee to prepare, at



the expense of this Association, and cause to be printed and distributed by the Secretary to the members of the Association, at least thirty days before each annual meeting, in the form of bills or resolutions, all of such measures as may be reported by it for their consideration, together with the report of committee.

All reports submitted to the Association recommending changes in the statutory law, or amendments thereto, shall be accompanied by bills or joint resolutions in the form to be presented to the General Assembly for enactment.

8. A Committee on Local Bar Associations, who shall be charged with the duty of encouraging the organization and maintenance of local Bar Associations throughout the State, and their affiliation with this Association.

9. A special committee of three members, to be known as the Committee on Legislative Enactment, shall be appointed by the President at the meeting next before each session of the General Assembly, which shall be continued until the annual meeting after the next session of the General Assembly, and it shall be the duty of said committee to present to the General Assembly in form of a memorial, all such bills and joint resolutions, the enactment of which has been recommended by this Association. Before the meeting of the General Assembly, a copy thereof shall be sent by mail by the Secretary of this Association to each member of the General Assembly, at least thirty days before its meeting, and as soon as it is organized, the Secretary shall place a copy thereof on the desk of each member. Such memorial shall contain a copy of each bill and joint resolution, as approved by this Association, and the reasons for their adoption, as shown by this Association, and such additional argument as it may deem necessary. And it shall be the duty of the committee to take all such steps as they may deem proper to insure the enactment of such bills and joint resolutions.

The expenses incurred by the committee shall be paid out of the funds of the Association. It shall be the duty of this committee to report to the meeting of the Association next after the meeting of the General Assembly, and accompany their report with a copy of the memorial, which they shall have submitted to the General Assembly.

### IX.

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of this Association, and shall continue in office until the annual meeting of the Association next after their appointment, and until their successors are appointed, with power to adopt rules for their own government not inconsistent with the Constitution or these By-Laws. Any standing committees of the Association may, by rule, provide that three successive absences from the meetings of the committee, unexcused, shall be deemed a resignation of the members so absent, of his place upon the committee. Any standing committee of the Association may, by rule, impose upon its members a fine for non-attendance and may provide for the disposition of the fines collected under such rule.

### X.

Whenever any complaint shall be preferred against a member of the Association for misconduct in his relations to this Association, or in his profession, the member or members preferring such complaint shall present it to the Committee on Grievances in writing, and subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The committee shall, thereupon, examine the complaint, and if they are of opinion that the matters therein alleged are of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than five days of the time and place when the committee will meet for the consideration thereof, to be served on the member complained of, either personally, or by leaving the same at his place of business during office hours, properly addressed to him. If after hearing his explanation the committee shall deem it proper that there should be a trial of the charge, they shall cause a similar notice of five days of the time and place of the trial to be served on the party complained of.

The committee shall be furnished with a list of the witnesses, their names and places of residence, who it is proposed shall be examined to sustain the charge which shall accompany the complaint when made to the committee; and when the day is set for trial the member complained of, upon his demand therefor, shall be entitled to a copy of said list of witnesses. At the time and place appointed for the trial, or at such other time as may be granted by the committee, the member complained of shall file a written answer or defense; and should he fail to do so, the committee may proceed thereupon to the consideration of the complaint.

The committee shall thereupon and at such other times and places as they may adjourn to, proceed to hear the evidence adduced and try the complaint, and shall determine all questions of evidence.

The complainant and the member complained of shall each be allowed to appear personally and by counsel who must be members of the Association; and the complainant and the member complained of shall each be competent witnesses. The witnesses shall vouch for the truth of their statements on their word of honor. The committee

shall have power to summon witnesses, and if any of such witnesses are members of the Association, neglect or refusal to appear may be reported to the Association by the committee and treated as misconduct.

The committee, of whom at least four must be present at the trial, except that a less number may adjourn from time to time, shall hear and decide the allegations submitted to them; and if they find the complaint or any material part of it to be true, they shall so report to the Association, with their recommendation as to the action to be taken thereon.

The decision of the committee shall be served on the member complained of; and if the decision be that the complaint or any material part thereof is true, and in that case only, the committee shall also serve a copy of the complaint, answer, if there be an answer, and decision on the President of the Association; and if requested either by the member or members complaining, or the member complained of, shall annex thereto a copy of the evidence taken, which said document shall be regarded as a report of the committee to the Association.

Every such report shall be acted on only by the Association at an annual, stated or adjourned meeting of the Association and of which the member complained of shall have due notice, to be served upon him by direction of the committee. The Association shall thereupon proceed to take such action on said report as they may see fit, provided only that no member shall be expelled unless by the vote of two-thirds of the members present and voting.

Whenever any trial shall be determined on, the member complained of may object for cause to any of the members of said committee, which causes he shall state in writing and present to the committee, thereupon the committee shall report the facts to the President, and enclose to him a copy of the objections for cause; and the President shall forthwith summon the Central Council to meet

with him and determine what weight, if any, the objections for cause are justly entitled to have, and if the President and a majority of the Central Council present and voting, shall determine that the objections for cause are not well taken, and that the same are overruled, the President shall so inform the Committee on Grievances, but if the President and a majority of the Central Council as aforesaid shall determine that any of said objections for cause to any member of the Committee on Grievances are well taken, then the President shall so inform said committee, and forthwith appoint another member or members to supply the temporary vacancy caused thereby; and the method herein provided shall be resorted to until a committee is obtained against whom the member complained of urges no just objection for cause.

All the foregoing proceedings shall be kept secret, except as their publication is hereinbefore provided for, unless otherwise ordered by the Association.

### DISBARMENTS.

That whenever the Central Council shall direct the prosecution for disbarment of an attorney, if in their judgment it shall be necessary or desirable that assistant counsel should be appointed to assist in the prosecution of said cause, they shall appoint a member of this Association, with instructions to assist in such prosecution, and it shall be the duty of such member to comply with such order of the Central Council, and any member of this Association, so appointed who shall, without good excuse, fail or refuse to assist in such prosecution, shall be expelled from the Association. And the Central Council shall report to the Association all such failures to prosecute, and in the event of failure of any attorney so appointed, the Central Council shall appoint some other

member of this Association to act as such assistant prosecuting attorney.

## XI.

Nomination of candidates to fill the respective offices may be made at the time of the election by any member, and as many candidates may be nominated for each office as members may wish to name, but all elections, whether to office or membership must be by ballot. A majority of the votes cast shall be sufficient to elect to office; but five negative votes shall be sufficient to defeat an election to membership.

## XII.

All vacancies in any office or committee of this Association shall be filled by appointment of the President, and the persons thus appointed shall hold for the unexpired term of his predecessor; but if a vacancy occur in the office of President, it shall be filled by the Association at its first stated meeting occurring more than ten days after the happening of such vacancy and the person elected shall hold office for the unexpired term of his predecessor.

## XIII.

Every member of this Association shall pay his annual dues to the Treasurer on the first day of March in each year, and no person shall be qualified to exercise any right or privilege of membership who is in default in that respect for a period of sixty days after that time; *provided, however,* that at any time before next meeting of the Association thereafter such person may be restored to membership by order of the Executive Committee, and upon his having then paid his annual dues to the Treasurer;

and all persons who have ceased to be members of the Association by reason of failure to pay their annual dues will no longer be borne upon the roll as members thereof by the Secretary and Treasurer.

## XIV.

These By-Laws may be amended at any stated, adjourned or annual meeting of the Association by majority vote of those present.

## XV.

Any officer may resign at any time upon settling his accounts with the Association. A member may resign at any time upon the payment of all dues to the Association; and from the date of the receipt by the Secretary of a notice of resignation with an endorsement thereon by the Treasurer that all dues have been paid as above provided, the person giving such notice shall cease to be a member of the Association.

## XVI.

The offices of Secretary and Treasurer shall be filled by the Secretary, and his annual salary shall be five hundred dollars, one-half of which shall be due on the first day of May, and the other half on the first day of November in each year, but may be paid earlier or at any other time if Executive Committee shall, in writing, so direct, but this shall be in full of all compensation to him. No other officer of the Association shall receive any salary or compensation.

## XVII.

The Association shall have its annual meeting at such time and place as the Executive Committee may deter-

mine, and continue in session until all the business before it is disposed of. If the President and Central Council shall determine that it is necessary for said Association to hold any other meeting, during any year, the same shall be held at such time and place as the Central Council may fix, and upon twenty days notice of such time and place to be given by the Secretary, by publication in a public newspaper, and the Secretary shall give this notice upon the order of the President.



NECROLOGY OF THE  
ALABAMA STATE BAR ASSOCIATION,  
1905-1906.

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BY THOMAS M. OWEN, *Chairman,*  
*Committee on Memorials.*

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During the year just closed, the Association lost one honorary member, Chief Justice Thomas N. McClellan, and four active members, Messrs. Daniel Coleman, Henry R. Dill, J. W. Gray and W. W. Kirkland. Sketches follow, prepared by the members of the committee whose names are appended to the respective sketches. The brief sketch of Judge McClellan is condensed from the *Alabama Official and Statistical Register* for 1903, p. 29, being originally prepared for that publication from data supplied by him. Judge McClellan died on the morning of Feb. 10, 1906, and his interment was at Athens, Ala. His death was a great shock to the State, and expressions of grief were numerous. The exercises held by the Supreme Court, May 14, 1906, together with addresses and resolutions, are to be found in full in the 144 *Alabama Reports*, 21-36. W. R. Walker, of Athens, one of the members of the Committee on Memorials, spoke for the Limestone County Bar, and his address appears in full. The life and judicial services of Judge McClellan ought, at some future time, to form the subject of a separate and elaborate study.

## THOMAS NICHOLAS M'CLELLAN.

Thomas N. McClellan, late chief justice of the Supreme Court of the State of Alabama, was born February 23, 1853, in Limestone county, and is the son of Thomas Joyce McClellan, a native of Lincoln county, Tenn., and wife Martha Fleming, daughter of John Beattie, and wife Joanna Moore, of the same county. His paternal ancestors are Scotch-Irish, emigrating from North Ireland, and his maternal ancestors came from England, both branches settling in Virginia. On both sides his ancestors were soldiers in the war of the Revolution. His father, Thomas J. McClellan, was a Whig, member of the Constitutional Conventions of Alabama in 1861, and in 1865, and a member of the house of representatives from Limestone county in 1862. He came to Limestone county in 1844, and died there in 1887. Judge McClellan was educated in the common schools, and at Oak Hill College, Tenn. In June, 1872, he took his degree of LL. B. in the law department of Cumberland University, Lebanon, Tenn. He began the practice in September, 1872, at Athens, in co-partnership with his brother, Captain Robert A. McClellan. He was register in chancery of Limestone county, 1874-76; State Senator, 1880-84; State Attorney-General, 1884-89; Associate Justice Supreme Court, 1889-98; and was Chief Justice from November, 1898, to his death. He was a Democrat. He never married.

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DANIEL COLEMAN.

Again we are called upon to chronicle the death of a valued member of this Association. Daniel Coleman died on the 29th day of June, 1906, at his residence in Huntsville, Alabama. He was born in the town of Athens,

Ala., September 7, 1838. His father, Judge Daniel Coleman, was a native Virginian; his mother, Elizabeth Peterson, a notably brilliant woman, was a native of North Carolina.

Our brother was nurtured in a legal atmosphere. His father, an active and successful practitioner, of exalted character, was circuit judge, and later, a member of the Supreme Court of Alabama, finally rounding out his life in the establishment of a law school at Athens. Here, as a lad, young Daniel Coleman mingled with the professional pupils, among them a number of the most illustrious men the State has produced.

He was admitted to the Bar in 1860, but early thereafter responded to the call of the War of Secession, enlisting as a private in the 'Madison Rifles. His army career was varied and active. His first service was at Pensacola. After serving several months with the 7th Alabama Infantry Regiment he was transferred to Virginia, when he became a member of the staff of General Philip St.G. Cocke. Subsequently, he was a member of the staff of General Sterling A. M. Wood, in General Pat Cleburne's famous division. When his brother Captain John A. Coleman, of Hawkins' Battalion of Sharpshooters was killed in the battle of Murfreesboro he became the captain of the same company. This specially dangerous arm of the service he faithfully followed, until the Battalion was practically destroyed on Chickamauga field. At this carnage another brother, Lieutenant Richard Vance Coleman, fell at his side. Thereafter he was attached to Wheeler's Cavalry, and finally surrendered with this noble band, closing a military career of remarkable daring and efficiency.

The close of the war witnessed the unselfish devotion of this good man. Destitute of worldly riches, he taught school for his daily support, and for the education of his younger brothers. He located in Athens, and there began

the practice of law. In 1872, he was elected State senator from the counties of Limestone and Lauderdale, after serving as solicitor for Limestone county. He resigned as State senator, and settled in Huntsville, where he had married. Subsequently he was elected by the general assembly, solicitor of the eighth judicial circuit. This office he held for a term of six years, discharging its duties fearlessly, and with great ability. In 1886, he was appointed by President Cleveland to the consulship at St. Etienne, France, performing its duties with distinction. The failing health of his wife demanded his resignation, after which they lived for quite a period on the Island of Capri, in the Bay of Naples, often styled "the loveliest spot on the globe." Returning to his home in Huntsville, he re-entered the legal profession, and this he followed, in splendid fellowship with his brethren, until the end.

Surviving him, his wife, a woman of charming personality, a daughter of rare education and gracious demeanor, and a son, a Captain in the Army of the United States, of high standing and of chivalric type, mourn his loss.

While he lived on a noble plane in military and professional life, yet, to know him at his best, was his companionship as a citizen and neighbor. He was a man of sincere Christian conviction, which he never failed to exemplify. The Huntsville Bar fittingly designated him, "a Christian gentleman."

LAWRENCE COOPER.

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HENRY R. DILL.

Henry R. Dill was born in Marion, Perry county, Ala., on October 29, 1869. He attended Howard College, from which institution he graduated with first honors in June, 1889, taking the degree of Bachelor of Arts. He was ad-

mitted to the practice of law, upon examination before the Supreme Court of Alabama, on December 29, 1893. Immediately after leaving college, however, he spent two sessions as principal of the public schools at Columbia, Henry county, Ala. He was the son of the late Dr. Thomas J. Dill, for many years professor of Latin and Greek at Howard College, and his wife, Mrs. Jane Lee (*Alison*) Dill, who were married in Carlowville, Dallas county, Ala., in 1851. Dr. Thomas J. Dill was the son of Dr. Joseph M. Dill and Mrs. Regina (*Alison*) Dill, both of South Carolina. Mrs. Jane Lee Alison Dill, (now living) is the daughter of Capt. Jacob S. Alison and Mrs. Mary (*Youngblood*) Alison, both of South Carolina.

Mr. Dill was married in June, 1905, to Miss Caroline McKenzie, of Tallassee, Ala., the daughter of John C. McKenzie and Mrs. Lillie (*Gibson*) McKenzie. He left surviving him his widow, his mother and three brothers, Messrs. Joseph M. Dill, of Bessemer, Ala., Dr. J. S. Dill, of Bowling Green, Ky., and Wm. Y. Dill, of Birmingham, Ala.

After being admitted to the Bar in 1893, Mr. Dill at once formed a partnership with Robert W. Huey, which partnership continued until October, 1894, at which time Mr. Huey died. Mr. Dill formed a partnership with Vassar L. Allen, of Birmingham, Ala., on November 1, 1899, which partnership continued until Mr. Dill's death, November 8, 1905. He was interred in Elmwood Cemetery, Birmingham, Ala. Mr. Dill was elected a member of the Legislature of Alabama from Jefferson county for the session of 1900-01, serving with distinction to himself, and satisfactorily to his constituents.

VASSAR L. ALLEN,

## JAMES W. GRAY.

James W. Gray died in the spring of 1906, at his home, No. 867 Dauphin street, Mobile. Mr. Gray was ill for only two days, and the news of his demise created a profound shock in the city. He was one of the leading practitioners at the Bar in Mobile, a member of the firm of Bestor, Gray & Bestor, and enjoyed the confidence and respect of a large number of friends. Mr. Gray was born in Montgomery, August 14, 1862, and came to Mobile when a mere lad. He secured employment with the law firm of Bestor & Overall, and during his spare moments read law. He made rapid headway, and in 1891, after a thorough examination, was admitted to practice at the Bar. He builded for himself an enviable reputation, and became a prominent light in the legal fraternity. He possessed one of the brightest of minds, and had he lived greater honors in his profession awaited him.

On December 14, 1886, he was married to Miss Emily Cameron, who, with two sons and two daughters, survive him, and mourn his untimely demise. Besides these he is survived by a sister, Mrs. C. E. Vincent, and a step-brother, Mr. W. H. Taylor. Mr. Gray was a consistent member of the Government Street Presbyterian Church, and a member of many of the societies of Mobile.

Mr. Gray was a descendant of one of the old Alabama families on his mother's side of the family, his grandfather being Dr. Silas Ames, an author of many medical works, and whose special study was of yellow fever. The portrait of Dr. Ames occupies one of the most prominent positions in the hall of archives and history in the capitol at Montgomery. Mr. Gray was also prominent in social circles in his home city, being a member of the "Strikers" and one of the governors of the Country Club, a member of the Gulf Fishing and Hunting Club and vice president of the Mobile Bar Association. However, he

was essentially a family man and to them he gave much of his leisure. He was interred in Magnolia Cemetery, Mobile.

D. P. BESTOR, JR.

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W. W. KIRKLAND.

W. W. Kirkland was born in Henry county, Ala., April 7, 1864, and died at Ozark, in Dale county, Ala., Feb. 19, 1906. He was the only son of Washington and Martha A. Kirkland. His father, a soldier in the Confederate army, was slain in battle near Columbus, Ga., about the close of the war, leaving him with three sisters, to the care of a widowed mother. Under the guidance of a mother's love, developed while very young, those noble qualities of mind and heart which gave promise of that bright career to which he afterward attained.

He spent his youth and grew to manhood's estate upon the farm, and during such intervals as the labor of his hands was not an essential contribution to the support of his mother and sisters, he attended the rural and village schools of his community, where he mastered well the rudiments of a common school education.

In the year 1884, although he had not yet reached his majority he was most happily married to Miss Laura Matthews, the daughter of James M. and Mary J. Matthews; and they twain, at first in moderate circumstances, but gathering about them a goodly competency, climbed the hill of life together, only to reach the summit and see the harvest bright beyond, when God appeared and laid His finger upon the keeper of the house and called him hence, leaving his companion to mourn his untimely departure.

Soon after his marriage he moved from the farm, near Skipperville, to Ozark, Ala. Here he engaged in mercantile pursuits for a short time. Abandoning this, he began

the study of law. He had a legal turn of mind, was an apt student and soon learned the law, its reasons, applications and exceptions. Having mastered the principles of his profession, and having great native ability, he soon took high rank at the Bar. He was a close student, an earnest advocate, and a tireless worker in the profession he so much loved.

By dint of merit he drew men about him, and by a peculiar magnetism he made them his friends; and these, out of their admiration for the man, called him to places of honor and trust. He was twice mayor of Ozark, presidential elector from the State at large, and was a member of the constitutional convention of Alabama, 1901. In that body he showed distinguished ability, and left the impress of a superior judgment among his fellows.

He was made a Mason in the year 1896, at Troy, Ala., and became a member of Ozark lodge June 13, 1903. His Masonic life was short, but rich with treasures of duty. The true virtue of Masonic principles was, to a high degree, born within him. His lodge adopted resolutions commemorative of the esteem in which he was held; and all classes in his home mourned his death.

Be it said of him that he wrought well for his short span of life, and that it might be said by him: "Father I have finished the work which Thou gavest me to do."

M. SOLLIE.



CODE OF ETHICS.

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The purity, and efficiency of judicial administration which under our system, is largely governmental itself, depend as much upon the character, conduct, and demeanor of attorneys in this great trust, as upon fidelity and learning of courts, or the honesty, and intelligence of juries.

"There is perhaps no profession after that of the sacred ministry, in which a high toned morality is more imperatively necessary than that of the law. There is certainly without any exception, no profession in which so many temptations beset the path to swerve from lines of strict integrity; in which so many delicate and difficult questions of duty are constantly arising. There are pitfalls and mantraps at every step, and the mere youth, at the very outset of his career, needs often the prudence and self-denial, as well as moral courage, which belongs commonly to riper years. High moral principle is the only safe guide; the only torch to light his way amidst darkness and obstruction."—*Sharswood*.

A comprehensive summary of the duties specifically enjoined by law upon attorneys, which they are sworn "not to violate," is found in section 791 of the Code of Alabama.

These duties are:

"First—To support the Constitution and laws of this State and the United States.

"Second—To maintain the respect due courts of justice and judicial officers.

"Third—To employ for the purpose of maintaining the causes confided to them, such means only as are consistent with truth, and never seek to mislead the judges by any false statement of the law.

"Fourth—To maintain inviolate the confidence, and at every peril to themselves, to preserve the secrets of their clients.

"Fifth—To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or a witness, unless required by the justice of the cause with which they are charged.

"Sixth—To encourage neither the commencement nor continuance of an action proceeding from any motive of passion or interest.

"Seventh—Never to reject, for any consideration personal to themselves, the cause of the defenseless and oppressed."

No rule will determine an attorney's duty in the varying phases of every case. What is right and proper must, in the absence of statutory rules and an authoritative code, be ascertained in view of the peculiar facts, in the light of conscience, and the conduct of honorable and distinguished attorneys in similar cases, and by analogy to the duties enjoined by statute, and the rules of good neighborhood.

The following general rules are adopted by the Alabama State Bar Association for the guidance of its members.

#### *Duties of Attorneys to Courts and Judicial Officers.*

1. The respect enjoined by law for courts and judicial officers is exacted for the sake of the office, and not for the individual who administers it. Bad opinion of the incumbent, however well founded, cannot excuse the withholding of the respect due the office, while administering its functions.

2. The proprieties of the judicial station, in a great measure, disable the judge from defending himself

against strictures upon his official conduct. For this reason, and because such criticisms tend to impair public confidence in the administration of justice, attorneys should, as a rule, refrain from published criticism of judicial conduct, especially in reference to causes in which they have been of counsel, otherwise than in courts of review, or when the conduct of a judge is necessarily involved in determining his removal from or continuance in office.

3. Marked attention and unusual hospitality to a judge, when the relation of the parties are such that they would not otherwise be extended, subject both judge and attorneys to misconstructions, and should be sedulously avoided. A self-respecting independence in the discharge of the attorney's duties, which at the same time does not withhold the courtesy and respect due the judges station, is the only just foundation for cordial personal and official relations between bench and bar. All attempts by means beyond these to gain special personal consideration and favor of a judge are disreputable.

4. Courts and judicial officers, in the rightful exercise of their functions, should always receive the support and countenance of attorneys against unjust criticism and popular clamor; and it is an attorney's duty to give them his moral support in all proper ways, and particularly by setting a good example in his own person of obedience to law.

5. The utmost candor and fairness should characterize the dealings of attorneys with the courts and with each other. Knowingly citing as authority an overruled case, or treating a repealed statute as in existence—knowingly misquoting the language of a decision or text-book—knowingly misquoting the contents of a paper, the testimony of a witness, or the language or argument of opposite counsel—offering evidence which it is known

the court must reject as illegal, to get it before the jury, under the guise of arguing its admissibility—and all kindred practices—are deceits and evasions unworthy of attorneys.

Purposely concealing or withholding in the opening argument, positions intended finally to be relied on, in order that opposite counsel may not discuss them, is unprofessional. Courts and juries look with disfavor on such practices, and are quick to suspect the weakness of the cause which has need to resort to them.

In the argument of demurrers, admission of evidence, and other questions of law, counsel should refrain from "side-bar" remarks and sparring discourse to influence the jury or by-standers. Personal colloquies between counsel tend to delay, and promote unseemly wrangling, and ought to be discouraged.

6. Attorneys owe to the courts and the public whose business the courts transact, as well as to their own clients, to be punctual in attendance on their causes; and whenever an attorney is late he should apologize or explain his absence.

7. One side must always lose the cause; and it is not wise, or respectful to the court, for attorneys to display temper because of an adverse ruling.

*Duties of Attorneys to Each Other, to Clients  
and the Public.*

8. An attorney should strive at all times, to uphold the honor, maintain the dignity, and promote the usefulness of the profession; for it is so interwoven with the administration of justice that whatever redounds to the good of one advances the other; and the attorney thus discharges, not merely the obligation to his brothers, but a high duty to the State and his fellow-man.

9. An attorney should not speak slightly or disparagingly of his profession, or pander in any way to unjust popular prejudices against it; and he should scrupulously refrain at all times, and in all relations of life, from availing himself of any prejudice or popular misconception against lawyers, in order to carry a point against a brother attorney.

10. Nothing has been more potential in creating and pandering to popular prejudice against lawyers as a class, and in withholding from the profession the full measure of public esteem and confidence which belong to the proper discharge of its duties, than the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is an attorney's duty to do everything to succeed in his client's cause.

An attorney "owes entire devotion to the interest of his client, warm zeal in the maintenance and defense of his cause, and the exertion of the utmost skill and ability," to the end that nothing may be taken or withheld from him, save by the rules of law, legally applied. No sacrifice or peril, even to the loss of life itself can absolve from the fearless discharge of this duty. Nevertheless, it is steadfastly to be borne in mind that the great trust is to be performed within and not without the bounds of the law which creates it. The attorney's office does not destroy man's accountability to the Creator, or loosen the duty of obedience to law, and the obligation to his neighbor; and it does not permit, much less demand, violation of law, or any manner of fraud or chicanery, for the client's sake.

11. Attorneys should fearlessly expose before the proper tribunals corrupt or dishonest conduct in the profession; and there should never be any hesitancy in accepting employment against an attorney who has wronged his client.

12. An attorney appearing or continuing as private counsel in the prosecution for a crime of which he believes the accused innocent, forswears himself. The State's attorney is criminal, if he presses for a conviction, when upon the evidence he believes the prisoner innocent. If the evidence is not plain enough to justify a *nolle pros.*, a public prosecutor should submit the case, with such comments as are pertinent, accompanied by a candid statement of his own doubts.

13. An attorney cannot reject the defense of a person accused of a criminal offense, because he knows or believes him guilty. It is his duty by all fair and honorable means to present such defenses as the law of the land permits, to the end that no one may be deprived of life of liberty, but by due process of law.

14. An attorney must decline in a civil cause to conduct a prosecution, when satisfied that the purpose is merely to harrass or injure the opposite party, or to work oppression and wrong.

15. It is bad practice for an attorney to communicate or argue privately with the judge as to the merits of his cause.

16. Newspaper advertisements, circulars, and business cards, tendering profesional services to the general public, are proper; but special solicitation of particular individuals to become clients ought to be avoided. Indirect advertisement for business, by furnishing or inspiring editorials or press notices, regarding causes in which the attorney takes part, the manner in which they are conducted, the importance of his positions, the magnitude of the interests involved, and all other like self-laudation, is of evil tendency, and wholly unprofessional.

17. Newspaper publications by an attorney as to the merits of pending or anticipated litigation, call forth discussion and reply from the opposite party, tend to prevent a fair trial in the courts, and otherwise prejudice the

due administration of justice. It requires a strong case to justify such publications; and when proper, it is unprofessional to make them anonymously.

18. When an attorney is a witness for his client except as to formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the cause to other counsel. Except when essential to the ends of justice, an attorney should scrupulously avoid testifying in court in behalf of his client, as to any matter.

19. The same reasons which make it improper in general for an attorney to testify for his client, apply with greater force to assertions, sometimes made by counsel in argument, of personal belief in the client's innocence or the justice of his cause. If such assertions are habitually made they lose all force and subject the attorney to falsehoods; while the failure to make them in particular cases will often be esteemed a tacit admission of belief of the client's guilt, or the weakness of his cause.

20. It is indecent to hunt up defects in titles and the like and inform thereof, in order to be employed to bring suit; or to seek out a person supposed to have a cause of action, and endeavor to get a fee to litigate about it. Except where ties of blood, relationship or trust, make it an attorney's duty, it is unprofessional to volunteer advice to bring a lawsuit. Stirring up strife and litigation is forbidden by law, and disreputable in morals.

21. Communications and confidence between client and attorney are the property and secrets of the client, and can not be divulged, except at his instance; even the death of the client does not absolve the attorney from his obligation of secrecy.

22. The duty not to divulge the secrets of clients extend further than mere silence by the attorney, and forbids accepting retainers or employment afterwards from others involving the client's interests, in the matters about which the confidence was reposed. When the se-

crets or confidence of a former client may be availed of or be material, in a subsequent suit, as the basis of any judgment which may injuriously affect his rights, the attorney cannot appear in such cause, without the consent of his former client.

23. An attorney can never attack an instrument or paper drawn by him for any infirmity apparent on its face; nor for any other cause where confidence has been reposed as to the facts concerning it. Where the attorney acted as a mere conveyancer, and was not consulted as to the facts, and unknown to him, the transaction amounted to a violation of the criminal laws, he may assail it on that ground, in suits between third persons, or between parties to the instrument and strangers.

24. An attorney openly, and in his true character, may render purely professional services before committees, regarding proposed legislation, and in advocacy of claims before departments of the government, upon the same principles of ethics which justify his appearance before the courts; but it is immoral and illegal for an attorney so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding, to influence action.

25. An attorney can never represent conflicting interests in the same suit or transaction, except by express consent of all so concerned, with full knowledge of the facts. Even then such a position is embarrassing, and ought to be avoided. An attorney represents conflicting interests within the meaning of this rule, when it is his duty, in behalf of one of his clients, to contend for that which duty to other clients in the transaction requires him to oppose.

26. "It is not a desirable professional reputation to live and die with—that of a rough tongue, which makes a man to be sought out and retained to gratify the malev-



olent feeling of a suitor, in hearing the other side well lashed and vilified."

27. An attorney is under no obligation to minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client cannot be made the keeper of the attorney's conscience in professional matters. He cannot demand as of right that his attorney shall abuse the opposite party or indulge in offensive personalities. The attorney, under the solemnity of his oath, must determine for himself whether such a course is essential to the ends of justice and therefore justifiable.

28. Clients and not their attorneys are the litigants; and whatever may be the ill-feeling existing between clients, it is unprofessional for attorneys to partake of it in their conduct and demeanor to each other, or to suitors in the case.

29. In the conduct of litigation and the trial of causes, the attorneys should try the merits of the cause, and not try each other. It is not proper to allude to, or comment upon, the personal history, or mental or physical peculiarities or idiosyncracies of opposite counsel. Personalities should always be avoided, and the utmost courtesy always extended to an honorable opponent.

30. As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite attorney to trial when he is under affliction or bereavement; forcing the trial on a particular day to the serious injury of the opposite attorney, when no harm will result from a trial at a different time; the time allowed for signing a bill of exceptions, crossing interrogatories, and the like; the attorney must be allowed to judge. No client has a right to demand that his attorney shall be illiberal in such matters, or that he should do anything therein repugnant to his own sense of honor and pro-

priety; and if such a course is insisted on, the attorney should retire from the cause.

31. Where an attorney has more than one regular client, the oldest client in the absence of some agreement should have the preference of retaining the attorney, as against his other clients in litigation between them.

32. The miscarriages to which justice is subject, and the uncertainty of predicting results, admonish attorneys to beware of bold and confident assurances to clients, especially where the employment depends upon the assurance, and the case is not plain.

33. Prompt preparation for trial, punctuality in answering letters and keeping engagements, are due from an attorney to his client, and do much to strengthen their confidence and friendship.

34. An attorney is in honor bound to disclose to the client at the time of retainer, all the circumstances of his relation to the parties, or interest or connection with the controversy, which might justly influence the client in the selection of his attorney. He must decline to appear in any cause where his obligation or relations to the opposite parties will hinder or seriously embarrass the full and fearless discharge of all his duties.

35. An attorney should endeavor to obtain full knowledge of his client's cause before advising him, and is bound to give him a candid opinion of the merits and probable result of his cause. When the controversy will admit of it, he ought to seek to adjust it without litigation, if practicable.

36. Where an attorney, during the existence of a relation, has lawfully made an agreement which binds his client, he cannot honorably refuse to give the opposite party evidence of the agreement, because of his subsequent discharge or instructions to that effect by his former client.

37. Money or other trust property coming into the

possession of the attorney should be promptly reported, and never commingled with his private property or used by him, except with the client's knowledge and consent.

38. Attorneys should, as far as possible, avoid becoming either borrowers or creditors of their clients; and they ought scrupulously to refrain from bargaining about the subject matter of their litigation, so long as the relation of attorney and client continues.

39. Natural solicitude of clients often prompts them to offer assistance of additional counsel. This should not be met, as it sometimes is, as evidence of want of confidence; but after advising frankly with the client, it should be left to his determination.

40. Important agreements affecting the rights of clients should, as far as possible, be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made, because not reduced to writing, as required by rules of court.

41. An attorney should not ignore known customs or practice of the bar or of a particular court, even when the law permits, without giving opposing counsel timely notice.

42. An attorney should not attempt to compromise with the opposite party, without notifying his attorney, if practicable.

43. When attorneys jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the course to be pursued should be left to his determination. The client's decision should be cheerfully acquiesced in unless the nature of the difference makes it impracticable for the attorney to co-operate heartily and effectively; in which event, it is his duty to be asked to be discharged.

44. An attorney coming into a cause in which others are employed, should give notice as soon as practicable,

and ask for a conference, and if the association is objectionable to the attorney already in the cause, the other attorney should decline to take part, unless the first attorney is relieved.

45. An attorney ought not to engage in discussion or arguments about the merits of the case with the opposite party, without notice to his attorney.

46. Satisfactory relations between attorney and client are best preserved by a frank and explicit understanding at the outset, as to the amount of the attorney's compensation; and where it is possible, this should always be agreed on in advance.

47. In general it is better to yield something to a client's dissatisfaction at the amount of the fee, though the sum be reasonable, than to engage in a law suit to justify it, which ought always to be avoided, except as a last resort to prevent imposition or fraud.

48. Men, as a rule, overestimate rather than under value the worth of their services, and attorneys in fixing their fees should avoid charges which unduly magnify the value of their advice and services, as well as those which practically belittle them. A client's ability to pay can never justify a charge for more than the service is worth; though his poverty may require a less charge in many instances, and sometimes none at all.

49. An attorney may charge a regular client, who entrusts him with all his business, less for a particular service than he would charge a casual client for like services. The element of uncertainty of compensation where a contingent fee is agreed on, justifies higher charges than where compensation is assured.

50. In fixing fees the following elements should be considered: First. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to properly conduct the cause. 2d. Whether the particular case will debar the attorney's appear-

ance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that the attorney would otherwise be employed; and herein of the loss of other business while employed in the particular case, and the antagonism with other clients growing out of the employment. 3d. The customary charges of the bar for similar services. 4th. The real amount involved and the benefit resulting from the services. 5th. Whether the compensation was contingent or assured. 6th. Is the client a regular one, retaining the attorney in all his business? No one of these considerations is in itself controlling. They are mere guides in ascertaining what the service was really worth; and in fixing the amount it should never be forgotten that the profession is a branch of the administration of justice and not a mere money getting trade.

51. Contingent fees may be contracted for; but they lead to many abuses, and certain compensation is to be preferred.

52. Casual and slight services should be rendered without charge by one attorney to another in his personal cause; but when the service goes beyond this, an attorney may be charged as other clients. Ordinary advice and services to the family of a deceased attorney should be rendered without charge in most instances; and where the circumstances make it proper to charge, the fees should generally be less than in cases of other clients.

53. Witnesses and suitors should be treated with fairness and kindness. When essential to the ends of justice to arraign their conduct or testimony, it should be done without vilification or unnecessary harshness. Fierceness of manner and uncivil behavior can add nothing to the truthful dissection of a false witness' testimony and often rob deserved strictures of proper weight.

54. It is the duty of the court and its officers to provide for the comfort of jurors. Displaying special con-

cern for their comfort, and volunteering to ask favors for them, while they are present—such as frequent motions to adjourn trials, or take a recess, solely on the ground of the jury's fatigue, or hunger, and uncomfortableness of their seats, or the court room, and the like—should be avoided. Such intervention of attorneys, when proper, ought to be had privately with the court; whereby there will be no appearance of fawning upon the jury, nor ground for ill-feeling of the jury towards the court or opposite counsel, if such requests are denied. For like reasons, one attorney should never ask another in the presence of the jury, to consent to its discharge or dispersion; and when such a request is made by the court, the attorneys, without indicating their preference, should ask to be heard after the jury withdraws.

55. An attorney ought never to converse privately with jurors about the case; and must avoid all unnecessary communication, even as to matters foreign to the cause, both before and during the trial. Any other course, no matter how blameless the attorney's motives, gives color to the imputing evil designs, and often leads to scandal in the administration of justice.

56. An attorney assigned as counsel for an indigent prisoner ought not to ask to be excused for any light cause, and should always be a friend to the defenseless and oppressed.

FORMER PRESIDENTS.

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- \*WALTER L. BRAGG,  
January 20, 1879, to December 4, 1879.
- EDMUND W. PETTUS,  
December 4, 1879, to December 2, 1880.
- \*JOHN LITTLE SMITH,  
December 2, 1880, to December 30, 1881.
- \*EDWARD A. O'NEAL,  
December 30, 1881, to November 29, 1882.
- \*M. L. STANSEL,  
November 29, 1882, to August 2, 1883.
- \*HENRY C. SEMPLER,  
August 2, 1883, to August 7, 1884.
- \*N. H. R. DAWSON,  
August 7, 1884, to December 3, 1884.
- \*WILLIAM H. BARNES,  
December 3, 1884, to December 3, 1885.
- \*WILLIAM M. BROOKS,  
December 3, 1885, to December 2, 1886.
- \*HENRY C. TOMPKINS,  
December 2, 1886, to December 15, 1887.
- \*WILBUR F. FOSTER,  
December 15, 1887, to December 20, 1888.
- MILTON HUMES,  
December 20, 1888, to August 1, 1889.
- \*THOMAS H. WATTS,  
August 1, 1889, to August 7, 1890.
- HANNIS TAYLOR,  
August 7, 1890, to July 9, 1891.
- A. B. McEACHIN,  
July 9, 1891, to July 7, 1892.
- \*A. C. HARGROVE,  
July 7, 1892, to July 6, 1893.
- \*Deceased.

## ALABAMA STATE BAR ASSOCIATION

J. R. DOWDELL,

July 6, 1893, to July 11, 1894.

JAMES E. WEBB,

July 11, 1894, to July 11, 1895.

\*DANIEL S. TROY,

July 11, 1895, to September 25, 1895.

\*RICHARD C. JONES,

First Vice-President, acted as President  
from the death of Col. Troy.

September 25, 1895, to August 6, 1896.

\*RICHARD H. CLARKE,

August 6, 1896, to July 1, 1897.

JOHN P. TILLMAN,

July 1, 1897, to June 18, 1898.

\*JOHN D. ROQUEMORE,

June 18, 1898, to June 17, 1899.

JOSEPH J. WILLETT,

June 17, 1899, to June 16, 1900.

THOMAS G. JONES,

June 16, to June 29, 1901.

EDWARD L. RUSSELL,

June 29, 1901, to July 5, 1902.

LAWRENCE COOPER,

July 5, 1902, to June 20, 1903.

EDWARD DEGRAFFENRIED,

June 20, 1903, to July 9, 1904.

THOMAS R. ROULHAC,

July 9, 1904, to July 1, 1905.

GEO. P. HARRISON.

July 1, 1905, to July 6, 1906.

FREDERICK G. BROMBERG,

July 6, 1906.

\*Deceased.



OFFICERS OF THE ASSOCIATION.  
1906-1907.

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FREDERICK G. BROMBERG, Mobile.

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A. D. SAYRE, Montgomery.

J. H. NATHAN, Sheffield.

W. W. WHITESIDE, Anniston.

HENRY FITTS, Tuscaloosa.

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ALEXANDER TROY, Montgomery.

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R. T. GOODWYN,

LEE H. WEIL,

J. L. HOLLOWAY,

ALEX. TROY, *Ex-officio*.

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LEE C. BRADLEY, Birmingham,

EDWARD DEGRAFFENREID, Greensboro,

E. K. CAMPBELL, Birmingham,

C. C. WHITSON, Talladega.

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| Louis E. Jeffries .....    | Selma      |
| E. H. Dryer .....          | Talladega  |
| D. C. Blackwell .....      | Anniston   |

ON JUDICIAL ADMINISTRATION AND REMEDIAL  
PROCEDURE.

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| Charles W. Ferguson .....    | Birmingham |
| J. H. Nathan .....           | Sheffield  |
| Thomas L. Sowell .....       | Jasper     |

## ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

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| John A. Elmore .....             | Montgomery |
| Hinds Peevey .....               | Birmingham |
| C. D. Kline .....                | Anniston   |

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| E. W. Faith .....                | Mobile     |
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| W. B. Oliver .....             | Tuscaloosa |
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| E. W. Pettus, Jr. ....         | Selma      |
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| George H. Parker .....          | Cullman    |
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| W. M. Lackey .....           | Dadeville    |
| L. C. McCord .....           | Guntersville |
| A. R. Brindley .....         | Gadsden      |
| G. W. L. Smith .....         | Brewton      |

## ON LEGISLATIVE ENACTMENT.

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| A. H. Carmichael .....       | Tuscumbia  |

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| Avant, C. A. ....     | Birmingham |

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| Bestor, D. P. Jr. .... | Mobile     |
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| Bradley, Lee C. ....   | Birmingham |
| Brandon, W. W. ....    | Tuscaloosa |
| Brewer, S. L. ....     | Tuskegee   |

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| Brindley, A. R. ....   | Gadsden           |
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| Cooper, Lawrence ....  | Huntsville        |
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| Crum, Benj. P. ....    | Montgomery        |
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| Fitzpatrick, Alva .... | Montgomery        |
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| Foster, E. H. ....     | Huntsville        |

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|--------------------------|-------------|
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| Gunter, Gaston ....      | Montgomery  |
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| Harrison, W. B. ....     | Talladega   |
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| Hausman, D. S. ....      | Montgomery  |
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| Hundley, O. R. ....      | Huntsville  |
| Inge, Z. M. P. ....      | Mobile      |
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| Jones, Geo. P. ....      | Florence    |
| Jones, Geo. W. ....      | Montgomery  |
| King, J. C. ....         | Birmingham  |
| Kirk, J. T. ....         | Tuscumbia   |
| Kline, C. D. ....        | Anniston    |
| Knox, John B. ....       | Anniston    |
| Lackey, W. M. ....       | Dadeville   |
| Lane, L. M. ....         | Greenville  |
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| Lapsley, N. A. ....      | Anniston    |
| Lapsley, Rutherford .... | Anniston    |
| Latady, A. ....          | Birmingham  |
| LeGrand, M. P. ....      | Montgomery  |

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|-----------------------------|---------------|
| Letcher, J. T. ....         | Montgomery    |
| Ligon, R. F. ....           | Montgomery    |
| London, A. T. ....          | Birmingham    |
| London, John ....           | Birmingham    |
| Lowe, R. J. ....            | Birmingham    |
| Lull, Frank W. ....         | Wetumpka      |
| Mallory, H. S. D. ....      | Selma         |
| Mackenzie, Stuart ....      | Montgomery    |
| Maner, O. C. ....           | Montgomery    |
| Marks, Geo. M. ....         | Montgomery    |
| Martin, W. L. ....          | Montgomery    |
| Marx, Lee J. ....           | Birmingham    |
| Mayfield, J. J. ....        | Tuscaloosa    |
| McClellan, Thos. C. ....    | Athens        |
| McCord, L. C. ....          | Guntersville  |
| McDaniel, Henry ....        | Demopolis     |
| McDaniel, P. A. ....        | Abbeville     |
| McDowell, C. S. Jr. ....    | Eufaula       |
| McIntyre, C. P. ....        | Montgomery    |
| McKinley, John ....         | Eutaw         |
| McMorris, B. K. ....        | Wetumpka      |
| Merrill, A. H. ....         | Eufaula       |
| Merritt, H. P. ....         | Tuskegee      |
| Morrow, Hugh ....           | Birmingham    |
| Moseley, L. M. ....         | Union Springs |
| Mullins, Tipton ....        | Clanton       |
| Mulkey, W. O. ....          | Geneva        |
| Murphy, J. Jr. ....         | Huntsville    |
| Nathan, J. H. ....          | Sheffield     |
| Oliver, W. B. ....          | Tuscaloosa    |
| O'Neal, Emmet ....          | Florence      |
| Owen, Thos. M. ....         | Montgomery    |
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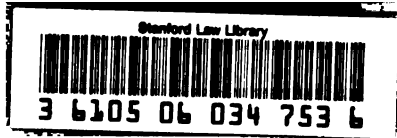












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